

229492

**RICHARD R. WILSON, P.C.**

**Attorney at Law**

**A Professional Corporation**

**518 N. Center Street, Ste. 1**

**Ebensburg, PA 15931**

(814) 419-8152

888-454-3817 (Toll Free)

(814) 419-8156 FAX

[rwilson@rrwilson.net](mailto:rwilson@rrwilson.net) – Email

[www.rrwilsonesq.com](http://www.rrwilsonesq.com) - Website

851 Twelfth Street

Oakmont, PA 15139

Of Counsel to:

Vuono & Gray LLC

2310 Grant Building

Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

May 10, 2011



Ms. Cynthia T. Brown, Chief  
Office of Proceedings  
Surface Transportation Board  
395 E. Street, SW  
Washington, DC 20423-0001

Re: Allegheny Valley Railroad Company – Allegheny Valley Railroad's Petition for  
Declaratory Order; STB Finance Docket No. 35239 – Remanded Proceeding

Dear Ms. Brown:

Enclosed please find an original and ten copies of Plaintiff's Opening Statement of Facts  
and Legal Argument to be filed in the above captioned matter.

Please time stamp the copy of this letter to provide proof of filing and return it in the self  
addressed, stamped envelope provided.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson, Esq.

Attorney for Allegheny Valley Railroad Company

RRW/bab

xc: All Parties of Record

Allegheny Valley Railroad Co.

ENTERED  
Office of Proceedings

MAY 11 2011

Part of  
Public Record

Before the  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-  
PETITION FOR DECLARATORY ORDER



ALLEGHENY VALLEY RAILROAD COMPANY'S  
STATEMENT OF FACTS AND ARGUMENTS – REMANDED PROCEEDING

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Public Record

RICHARD R. WILSON, ESQ.  
Attorney for Allegheny Valley Railroad  
Company  
Pa. I.D. #25661  
518 N. Center Street, Ste. 100  
Ebensburg, PA 15931  
(814) 419-8152  
(814) 419-8156 Fax

Dated: May 10, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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**FINANCE DOCKET NO. 35239**

**ALLEGHENY VALLEY RAILROAD COMPANY –  
PETITION FOR DECLARATORY ORDER**

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**ALLEGHENY VALLEY RAILROAD COMPANY’S  
STATEMENT OF FACTS AND ARGUMENTS – REMANDED PROCEEDING**

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I. INTRODUCTION

Based on the evidence and testimony submitted by the parties in this proceeding, on June 15, 2010 the Surface Transportation Board (“STB” or “Board”) issued its decision finding that Conrail had sought ICC abandonment authorization for its Smallman Street track between 11<sup>th</sup> Street and 21<sup>st</sup> Street in the Pittsburgh Strip District in AB167 (Sub No. 558N) and had not abandoned its rail line between 21<sup>st</sup> Street and 16<sup>th</sup> Street on the north side of the Pittsburgh Produce Terminal over the permanent rail easement which Conrail retained in its 1983 conveyance of underlying property to The Buncher Company (“Buncher”). Buncher filed an appeal of the Board’s decision with the U.S. Court of Appeals for the District of Columbia Circuit and while this appeal was pending, obtained copies of additional documents related to three subsequent Conrail abandonment filings for three sections of the Smallman Street track between 11<sup>th</sup> Street and 29<sup>th</sup> Street<sup>1</sup>. Based on these three additional abandonment filings,

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<sup>1</sup> In response to AVRR’s discovery requests, Buncher states that it obtained these documents from Mr. John Foley a former Conrail property manager in Pittsburgh, now employed by Norfolk Southern in its Pittsburgh office. AVRR is advised by Norfolk Southern that these documents were not provided by Mr. Foley in his capacity as a Norfolk Southern employee.

Buncher contends that Conrail's initial filing in AB167 (Sub No. 558N), could only have reference to Track 8 on the retained rail easement between 21<sup>st</sup> Street and the 16<sup>th</sup> Street north of the Pittsburgh Produce Terminal and that the Board's decision of June 11, 2010 was therefore in error. On January 11, 2011, the D.C. Circuit Court of Appeals remanded this proceeding to the Board to consider Buncher's additional evidence. On April 11, 2011, Buncher filed its Opening Statement of Facts and Argument in the remanded proceeding.

As directed by the Board's order of March 21, 2011, Allegheny Valley Railroad Company ("AVRR") files its statement of facts and arguments in this remanded proceeding to address the additional evidence proffered by Buncher concerning the three Conrail abandonment proceedings in AB167 (Sub Nos. 571N, 572N, and 641N) seeking abandonment authority for the Smallman Street Track from 11<sup>th</sup> Street to 29<sup>th</sup> Street in the Pittsburgh Strip District. Contrary to Buncher's assertions regarding these additional abandonment proceedings, the Verified Statement of Russell A. Peterson and Gerhard M. Williams, Jr. submitted herewith establish the events that actually occurred in 1983 and 1984 with respect to Conrail's restructuring of its Strip District rail facilities and confirm that the Board's June 15, 2010 decision in this proceeding is proper and justified.

Before the  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO: 35239  
ALLEGHENY VALLEY RAILROAD COMPANY -  
PETITION FOR DECLARATORY ORDER

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VERIFIED STATEMENT OF RUSSELL A. PETERSON

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My name is Russell A. Peterson and I am the Chief Executive Officer of Allegheny Valley Railroad Company, ("AVRR") 519 Cedar Way, Building 1, Suite 100, Oakmont, PA 15139. I have previously submitted testimony on behalf of AVRR in this proceeding.

I have carefully reviewed the new evidence submitted by Buncher in this case. It reveals additional facts and information regarding the Strip District rail service arrangement negotiated by the City of Pittsburgh and Conrail senior management officials prior to the 1984 abandonment of Conrail's Smallman Street track between 11<sup>th</sup> and 29<sup>th</sup> Street. These arrangements were related to a prior transaction involving Conrail's sale of the Pittsburgh Produce Terminal to the Pittsburgh Urban Redevelopment Authority ("URA") in 1981. In an effort to confirm these transactions, AVRR obtained documentation from the City of Pittsburgh which provides further context for the events described in Buncher's new evidence. However, before considering those topics, there are several factual issues raised by Buncher's new evidence which I wish to address.

Contrary to Buncher's April 11, 2011 Opening Statement, the portion of the Valley Industrial Track referred to in the 1983 deed from Conrail to Buncher was not

abandoned by Conrail under the 1984 abandonment proceeding AB 167 (Sub. 558N), in which the ICC issued a certificate authorizing Conrail to abandon the Fort Wayne Connecting Track (including the lower level of the Fort Wayne Bridge) to its junction with the Valley Industrial Track (MP 0.0) and the Valley Industrial Track from its connection with the Fort Wayne Connecting Track in Pittsburgh (MP 0.0) to the north side of 21<sup>st</sup> Street. The portion of Valley Industrial Track referred to in the 1983 deed from Conrail to Buncher, located on the north side of the Produce Terminal Building, did not connect with the Fort Wayne Connecting Track. Only the portion of the Valley Industrial Track located south of the Produce Terminal Building along Smallman Street connected with the Fort Wayne Connecting Track.

In 1981, Conrail began to rationalize its physical plant in the Pittsburgh Strip District. In February 1981, Conrail sold its Pittsburgh Produce Terminal Building property between 16<sup>th</sup> and 21<sup>st</sup> Streets to the Pittsburgh Urban Redevelopment Authority. In July 1983, Conrail sold Buncher the remaining land between 16<sup>th</sup> Street and 21<sup>st</sup> Street and Track Nos. 6 and 7 (all located on the north side of the Produce Terminal Building property), however, Conrail retained the permanent rail easement to continue to operate over and maintain its "so-called Valley Industrial Track" on the north side of the Pittsburgh Produce Terminal.

Conrail began the rationalization of its Strip District rail facilities to adjust for the removal of the lower bridge deck approach on the north end of the Fort Wayne Bridge to

provide adequate vertical clearances for construction of I-279<sup>1</sup>. The end result was the abandonment of the lower deck of the Fort Wayne Bridge and the rerouting of trains serving the Pittsburgh Produce Terminal and Strip District over the upper deck of the Fort Wayne Bridge and the Philadelphia - Pittsburgh Main Line thence via the Brilliant Branch to the Valley Industrial Track.

The designation "Valley Industrial Track" was adopted by Conrail in 1983 reflecting the restructuring of its Strip District rail facilities in anticipation of the abandonment of the lower deck of the Fort Wayne Bridge. Conrail replaced crossties, surfaced and installed welded rail on the Brilliant Branch between its junction with the Philadelphia - Pittsburgh Main Line at Home and its junction with the Strip District-New Kensington rail line. Conrail renamed the rehabilitated Brilliant Branch between Home and Nadine the "Valley Secondary". Turning toward Pittsburgh, Conrail designated the line of railroad between Nadine (MP 7.8) and MP 4.7 the "Coleman Secondary" and its lines of railroad between MP 4.7 and M.P. 0.0 in the Pittsburgh Strip District the "Valley Industrial Track" or "Cluster".

In 1983, the Valley Industrial Track south of the Produce Terminal Building began at the junction with the Fort Wayne Connecting Track (MP 0.00) east of 11<sup>th</sup> Street and ran along Smallman Street. The Valley Industrial Track north of the Produce

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<sup>1</sup> In 1963, the main span of the Ft. Duquesne Bridge over the Allegheny River at the junction of the Allegheny and Monongahela Rivers in downtown Pittsburgh was completed and connected to the road network on the north shore of the Allegheny River in 1968. However, the North Shore Expressway (I-279) which was to connect the Ft. Duquesne Bridge to I-79 was delayed for over 16 years because of inadequate clearance under Conrail's lower deck of the approach ramp to the Ft. Wayne Bridge. This obstacle was finally removed in 1984 when Conrail obtained abandonment authority for the lower deck of the Ft. Wayne Connecting Track in AB167 (Sub No. 588N). As indicated by the aerial photograph obtained from various internet sites, the North Shore Expressway involved the construction of 15 lanes of highway under the upper deck bridge approach to the Ft. Wayne Bridge over which AVRR presently operates to interchange traffic with Norfolk Southern (Exhibits D1, D2, and D3). The North Shore Expressway was finally completed in 1986.

Terminal Building began east of 16<sup>th</sup> Street (MP 0.3) and ran along Railroad Street. The Valley Industrial Track ended at MP 4.7, the beginning of the Coleman Secondary.

In February 1984, Conrail filed AB167 (Sub No. 558N) for authority to abandon the Fort Wayne Connecting Track from its junction with its main line on the north side of the Allegheny River across the lower deck of the Fort Wayne Bridge to its junction with the Valley Industrial Track (MP 0.0) and the Valley Industrial Track from its junction with the Fort Wayne Connecting Track (MP 0.0) to the north side of 21<sup>st</sup> Street (MP 0.66).

Since the parcel of land west of 16<sup>th</sup> Street and north of Smallman Street had been retained by the Penn Central Trustees and sold to Buncher in 1978, the portion of the Valley Industrial Track referred to in Sub No. 558N could only apply to the Smallman Street line of the Valley Industrial Track.

In 1984 Conrail continued its economic evaluation of its operations in the Pittsburgh Strip District. As shown in Buncher's new evidence on pages 74-75, as of May 1984, Conrail identified the Smallman Street track on the south side of the Produce Terminal as "embedded in the cobblestone streets of downtown Pittsburgh". Conrail's primary traffic, as of May 1984, was inbound produce moving to the Pittsburgh Produce Terminal via the Smallman Street track on the south side of the terminal.

Subsequent to Conrail's negotiation with the City of Pittsburgh, Conrail filed AB167 Sub No. 571N: A portion of the Smallman Street Track in Pittsburgh from MP 0.71 south of 22<sup>nd</sup> Street to MP 1.3 south of 29<sup>th</sup> Street dated May 23, 1984; AB 167 Sub No. 572N: A portion of the Smallman Street Track in Pittsburgh from MP 0.00 east of 11<sup>th</sup> Street to MP 0.3 east of 14<sup>th</sup> Street dated May 23, 1984; and AB 167 Sub No. 641N:



The Smallman Street Branch in Pittsburgh from MP 0.3 east of 14<sup>th</sup> Street to MP0.85 east of 24<sup>th</sup> Street dated June 8, 1984. AB167 (Sub No. 572N) brought abandonment to Byrnes & Kiefer, Adleman Lumber and Mock Seed, all located on the south side of Smallman Street between 11<sup>th</sup> and 14<sup>th</sup> Streets. AB167 (Sub No. 571N) brought abandonment to David Dow & Sons Co. located on the north side of Smallman Street at 26<sup>th</sup> Street. AB167 (Sub No. 641N) brought abandonment to the south side of the Produce Terminal Building. As noted above, as of May 1984, the primary traffic was inbound produce moving to the Pittsburgh Produce Terminal via a track on the south side of the terminal. Numerous wholesale produce customers were affected including J. E. Corcoran Company at the Produce Terminal.

#### Buncher's New Evidence

In an effort to provide the Board with a definitive factual explanation of the additional Conrail abandonment filings produced by Buncher for the Smallman Street track, we were able to contact Mr. Gerhard Williams, Jr., the Conrail Assistant Vice-President for Regional Market Development who was responsible for administering and managing the 1984 Conrail abandonment proceedings in the Pittsburgh Strip District. We provided Mr. Williams with copies of all the abandonment documents presented by Buncher and the Conrail abandonment filing in AB167 (Sub No. 558N). We asked him to review these documents and provide AVRR with his recollection of the various decisions, discussions and actions undertaken by Conrail and the City of Pittsburgh with respect to these abandonment proceedings. Mr. Williams' testimony is contained in his Verified Statement which he provided to AVRR. His statement provides a first hand explanation of why Conrail refiled for abandonment authority for the Smallman Street

line after it agreed with the City of Pittsburgh to preserve rail service to the Pittsburgh Produce Terminal via its rail facilities north of the Pittsburgh Produce Terminal building. Mr. Williams' Verified Statement confirms that Conrail continued to own and operate its track and right of way on the north side of the Pittsburgh Produce Terminal as part of its common carrier rail facilities until those facilities were sold to AVRR in 1995. To this day, AVRR serves J.E. Corcoran at the Produce Terminal via its rail facilities along Railroad Street.

#### Conrail's Pittsburgh Produce Terminal Service Commitment

Let me next provide the Board with further factual context that sheds additional light on Buncher's motives and objectives with respect to AVRR's rail facilities in the Strip District between 16<sup>th</sup> and 21<sup>st</sup> Street. On February 23, 1981, Conrail sold the Pittsburgh Produce Terminal Building to the Pittsburgh Urban Redevelopment Authority ("URA"). In the deed from Conrail to URA, Conrail reserved an easement for its Smallman Street track on the south side of the terminal and it also insisted on the inclusion of the following provision in the deed to URA:

THIS INSTRUMENT is executed, delivered and accepted upon the understanding and agreement:

(a) that Grantee [URA] acknowledges that the basic use of the building located on the land hereby conveyed is as a rail freight facility served directly by rail lines of Grantor and Grantee further acknowledges that its primary public purpose in acquiring said premises is to rehabilitate said building in order to provide continued rental space for the wholesale produce industry and agrees to use its best efforts to continue it as such or some other rail-oriented use; (Exhibit A)

The URA did not want this restriction on the use of the Terminal in the deed but in the negotiations with URA, Conrail prevailed and the URA agreed to acquire and use the Produce Terminal as a rail served whole sale terminal building. (See Exhibit B).

Indeed, in 1984 when Conrail reexamined its Strip District rail service and determined to abandon the Smallman Street track from 11<sup>th</sup> Street to 21<sup>st</sup> Street, it was this deed provision which Pittsburgh Mayor Richard Caliguiri cited to Conrail President Stanley Crane as the basis for a possible legal challenge by the City to Conrail's Smallman Street abandonment proceeding. It was in recognition of this deed provision that Conrail and the City agreed that Conrail would maintain rail service to the Pittsburgh Produce Terminal using its Railroad Street tracks and right of way on the north side of the terminal, service which AVRR continues to provide to the wholesale food tenants at the Pittsburgh Produce Terminal to this day<sup>2</sup>.

It is AVRR's rail service to the Pittsburgh Produce Terminal that Buncher and the URA have attempted to discourage in pursuit of development plans for Buncher's Strip District properties. After 1984, Buncher placed concrete jersey barriers along the boundaries of its property between 16<sup>th</sup> and 21<sup>st</sup> Street to prevent the trucks serving the Produce Terminal from traversing its property. This barrier reduced available turning space and forced the replacement of the freight dock along the north side of the Produce Terminal Building, which had worked for both rail cars and trucks, with a saw-tooth dock that worked for only trucks. As a result, Produce Terminal wholesale produce customers were forced to transload their rail car deliveries north of 21<sup>st</sup> Street onto trucks.

As noted previously, Buncher acquired most of the former Conrail Produce Yard property between 11<sup>th</sup> Street and 21<sup>st</sup> Street from Smallman Street to the Allegheny River from the Penn Central Trustees or Conrail between 1978 and 1983. However, as reported

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<sup>2</sup> In the last three years, AVRR has delivered 227 carloads of produce to two whole sale food customers in the Pittsburgh Produce Terminal. These deliveries were made from AVRR's team track which is located just east of 21<sup>st</sup> Street and were transported across 21<sup>st</sup> Street to the Produce Terminal building by truck. Total freight revenues generated by this traffic were \$32,940.00 in 2008, \$37,500.00 in 2009, and \$39,028.00 in 2010.

in various commercial publications attached as Exhibits C-1, C-2, C-3, C-4, C-5, and C-6 last year Buncher leased the Produce Terminal building from URA with an option to purchase and has now approached the Pennsylvania Museum and Historical Commission seeking permission to tear down all or a part of the Pittsburgh Produce Terminal (which is eligible to be listed on the National Register of Historic Places) to provide better access to its property north of the terminal between 16<sup>th</sup> and 21<sup>st</sup> Street on which AVRR's rail easement is located.

In addition, URA has also informed wholesale food tenants in the Pittsburgh Produce Terminal that their leases will not be renewed and that they will have to relocate to other property (which may or may not served by AVRR). Given these developments, it is evident that Buncher and its supporters at the URA are working in concert to interfere with AVRR's common carrier rail service to shippers in the Pittsburgh Produce Terminal in dereliction of the deed provision requiring URA and Buncher to use their best efforts to promote the Pittsburgh Produce Terminal as a rail served wholesale food terminal. Placed in this context, it is patently evident that Buncher is intent on precluding AVRR from providing future rail services to the Pittsburgh Produce Terminal food wholesalers and preventing future use of AVRR's rail facilities from 21<sup>st</sup> Street to 16<sup>th</sup> Street for future rail freight and passenger service.

Given its significant financial investment in and expectations for the development of its Strip District properties, Buncher has substantial financial incentives for misconstruing and misinterpreting the 1984 Conrail Strip District abandonment filings for the Smallman Street track in an effort to establish that AVRR's rail easement was abandoned by Conrail. However, the additional documents provided by Buncher and the

explanation provided by Mr. Williams actually clarify and confirm the Board's initial decision in this proceeding. Conrail's President Stanley Crane gave his personal and a corporate commitment to Pittsburgh Mayor Richard Caliguiri that Conrail would not take any abandonment action on the Smallman Street track until Pittsburgh Produce Terminal rail service issues had been resolved with the City. He sent Mr. Williams to meet with City representatives and they agreed that Conrail would continue to serve the Pittsburgh Produce Terminal wholesalers via its Railroad Street tracks and right of way on the north side of the terminal. With these service commitments in place, Conrail, with the City's acquiescence, subsequently refiled for more extensive abandonment authority for the Smallman Street tracks from 11<sup>th</sup> to 29<sup>th</sup> Street in the three abandonment dockets which Buncher has submitted for the Board's consideration. Even if Conrail's initial abandonment notice for the Valley Industrial Track in AB167 (Sub No. 558N) had included track facilities and right of way between 16<sup>th</sup> and 21<sup>st</sup> Street on the north side of the Pittsburgh Produce Terminal, that notice and the authority issued by the ICC on May 14, 1984 were explicitly superseded by Conrail's commitment to the City of Pittsburgh to continue to serve the Pittsburgh Produce Terminal via its northside rail facilities. It is therefore evident that Conrail did not exercise the abandonment authority granted for the Smallman Street track (or any other Strip District track) by the ICC in AB167 (Sub No. 558N), and instead refiled for authority to abandon the Smallman Street track in three separate segments based on its Produce Terminal service commitment to the City of Pittsburgh.

No amount of argument or obfuscation on the part of Buncher can refute what its own evidence demonstrates:

(1) Conrail did not abandon its permanent rail easement right of way on the north side of the Pittsburgh Produce Terminal between 21<sup>st</sup> Street and 16<sup>th</sup> Street in AB167 (Sub No.558N) or at any other time.

(2) AVRR acquired and owns the permanent rail easement right of way between 21<sup>st</sup> and 16<sup>th</sup> Street as part of its regulated common carrier railroad line under authority acquired from the ICC in Finance Docket No. 32783.

(3) The STB therefore continues to exercise jurisdiction over AVRR's railroad line from 16<sup>th</sup> Street over the permanent rail easement and the balance of AVRR's rail line to New Kensington, PA.

Accordingly, the additional abandonment documents provided by Buncher and the Verified Statement of Mr. Gerhard Williams, Jr. conclusively establish that the Board's initial decision in this proceeding was correct.

## EXHIBITS

1. Exhibit A. Conrail deed dated February 23, 1981 for conveyance of Pittsburgh Produce Terminal Building to Pittsburgh Urban Redevelopment Authority
2. Exhibit B City of Pittsburgh Memoranda dated August 5, 1980, and August 12, 1980 with draft Agreement for sale of Pittsburgh Produce Terminal
3. Exhibit C-1 *Pittsburgh Business Times* article  
Dated March 9, 2010
4. Exhibit C-2 *Pittsburgh Post Gazette* article  
Dated March 12, 2010
5. Exhibit C-3 Pittsburgh Urban Redevelopment Authority  
Press release dated December 9, 2010
6. Exhibit C-4 *Pittsburgh Business Times* article  
Dated December 9, 2010
7. Exhibit C-5 *Pittsburgh Post Gazette* article  
Dated December 10, 2010
8. Exhibit C-6 *Pittsburgh Tribune Review* article  
Dated March 5, 2011
9. Exhibit D-1 Pittsburgh Ft. Duquesne Bridge to Nowhere
10. Exhibit D-2 Aerial view of I-279 passing under the upper deck approach ramp to the Ft. Wayne Bridge
11. Exhibit D-3 View of AVRR train crossing over I-279 on the upper deck approach with cars received from Norfolk Southern

9-D-200 } COMBINE  
9-D-225 } UNDER  
9-D-200

INDENTURE, made the 15<sup>th</sup> day of February in the year of our Lord One Thousand Nine Hundred and Eighty-one (A.D. 1981)

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Six Penn Center Plaza, Philadelphia, Pennsylvania, 19104, hereinafter referred to as the Grantor, and URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, whose mailing address is City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219 hereinafter referred to as the Grantee;

WITNESSETH: That the said Grantor, for and in consideration of the sum of ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed and by these presents does remise, release and quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to

ALL THAT CERTAIN LOT OR PIECE OF GROUND situate in the 2nd Ward, City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania, being more particularly bounded and described according to a plat of Survey prepared by Frank Louis Kline Registered Professional Engineer No. 18694-E dated January 1981 as follows, to wit:

BEGINNING at the point of intersection of the Easterly line of 16th Street (60' wide) and the Northerly line of Smallman Street (60' wide); thence Northeasterly along the Northerly line of Smallman Street, North 52° 00' East, a distance of 804.00 feet to a point; thence continuing along the Northerly line of Smallman Street, North 49° 10' 45" East, a distance of 612.69 feet to a point; thence continuing Northeasterly, North 49° 17' 08" East, 129.36 feet to a point on the Westerly line of 21st Street (60' wide); thence Northeasterly along the Westerly line of 21st Street, North 41° 21' 39" West, a distance of 210.93 feet to a point; thence Southwesterly, South 49° 11' 00" West, a distance of 774.15 feet to a point; thence continuing Southwesterly, South 51° 56' 36" West, a distance of 818.71 feet to a point on the Easterly line of 16th Street; thence Southeasterly along the Easterly line of 16th Street, South 40° 51' 45" East, a distance of 230.86 feet to the point of intersection of the Easterly line of 16th Street and the Northerly line of Smallman Street, the place of BEGINNING.

CONTAINING 3,156 acres.

HAVERING FRICTED THERPON is one story brick warehouse building and an attached two story brick office building.



BEING a portion of the premises which the Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-193, dated March 30, 1976 and recorded in Allegheny County, Pennsylvania, in Deed Book 6001, at Page 591, granted and conveyed unto Consolidated Rail Corporation.

TOGETHER with 6000 lineal feet of railroad track and appurtenances thereto located on the above described premises.

RESERVING, however, unto the said Grantor, its successors and assigns, the existing railroad track and appurtenant devices and facilities in connection with the same located on the extreme southeasterly 15 feet of the parcel of land hereinbefore described together with the permanent right, liberty and privilege of maintaining, repairing, renewing, operating and using the same and with the free and uninterrupted right, liberty, and privilege of passing at all times hereafter over and upon the same with or without locomotives, freight or other cars.

200  
SUBJECT, however, to any easements or agreements of record or otherwise affecting the land hereby conveyed, to the state of facts disclosed in a survey by Francis Louis Kline, Registered Professional Engineer, dated January 1981, and to any other pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the herein conveyed premises, together with the right to maintain, repair, renew, replace, use and remove same.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof, SUBJECT and RESERVING as aforesaid.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the said Grantee forever, SUBJECT and RESERVING as aforesaid.

THIS INSTRUMENT is executed, delivered and accepted upon the understanding and agreement:

(a) that Grantee acknowledges that the basic use of the building located on the land hereby conveyed is as a rail freight facility served directly by rail lines of Grantor and Grantee further acknowledges that its primary public purpose in acquiring said premises is to rehabilitate said building in order to provide continued rental space for the wholesale produce industry and agrees to use its best efforts to continue it as such or some other rail-oriented use;

(b) that Grantor shall not be liable or obligated to construct or maintain any fence between the land hereinbefore described and land of Grantor adjoining the same; or be liable or obligated to pay for any part of the cost or expense of constructing or maintaining such a fence or any part thereof; or be liable for any compensation for any damage that may result by reason of the non-existence of such a fence;

(c) that the said Grantee shall not have or assert to have any claim or do and whatsoever for compensation for damages, whether said damages be direct or consequential, to the land hereinbefore described or to any buildings or improvements now or hereafter erected thereon, or to the contents thereof, which may be caused by the operation, maintenance, repair or renewal of

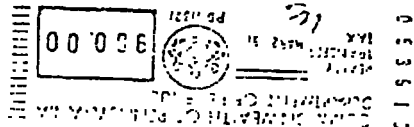
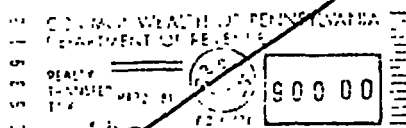
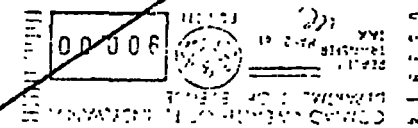
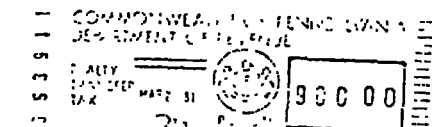
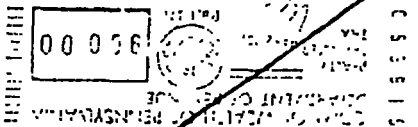
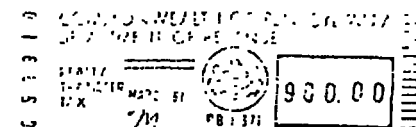
Grantor's railroad or which may be caused by vibration resulting from the operation, maintenance, repair or renewal thereof; and the said Grantee hereby expressly releases the said Grantor from liability for any such damages;

(d) that in the event the tracks of the railroad of Grantor are elevated or depressed, or the grades of any streets, avenues, roads, lanes, highways or alleys over said railroad in the vicinity of the land hereinbefore described are changed so that they shall pass overhead or underneath the said tracks and railroad, or in the event any grade crossing is vacated and closed, the said Grantee, as owner of the land hereinbefore described, shall not ask, demand, recover or receive any compensation whatsoever for any damage of whatsoever nature caused by or in any manner growing out of the separation or change of grades of said railroad and/or said streets, avenues, roads, lanes, highways or alleys or out of the vacation and closing of any grade crossing;

(e) that should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

208  
"NOTICE - THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. THIS NOTICE is set forth in the manner provided in Section 1 of the Act of September 10, 1965, P.L. 505, No. 255 (52 P.S. 1551)."

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include in all cases the heirs or successors and assigns of the respective parties.



IN WITNESS WHEREOF, the said Grantor has caused this inden-

80-317  
**CITY OF PITTSBURGH**  
**MEMORANDUM**

DEPT. OF LAW	
RECEIVED	8/6/80
FORWARDED TO	
M. Maggini	
DATE	

TO: Mead Mulvihill

DEPARTMENT: Law Department

FROM: Edward D. deLuca

DEPARTMENT: City Development

DATE: August 5, 1980

SUBJECT:

IMPORTANT  
RUSH

Can you please have someone on your staff review the enclosed option for the purchase of the Conrail Produce Terminal?

The City will be buying this building through URA. However, Joe Gariti is on vacation for two weeks and I must get this option to EDA as part of a \$2 million grant I'm requesting. !

My comments regarding substance, not legal considerations, follow:

1. I'd like the option payment be considerably lower than the \$95,000 asked. What's the lowest amount we can offer?
2. I'd like some escape clause in the paragraph marked with (?) on page two if economic characteristics of the area changes drastically some years down the road.

I know I'm imposing on you, Mead, but hope you can help me.

80-511  
7/24  
VI. 224(d)  
about XVII & 1980  
U.R.A.

**CITY OF PITTSBURGH**

TO Edward D. deLuca, Director DEPARTMENT City Development

FROM Mead J. Mulvihill, Jr., DEPARTMENT Law  
City Solicitor

DATE August 12, 1980

SUBJECT

In response to your memorandum of August 5, 1980, I suggest that the following language be substituted for the paragraph you questioned on page 2 of the draft agreement:

Purchaser, as grantee, covenants and agrees to continue the basic use of the produce terminal building situate on the premises as a rail freight facility served directly by rail lines and further covenants and agrees not to convert any other space in said building to non-rail in other than that certain 44,000 square feet currently occupied for non-rail purposes, unless the City finds it in its best interests due to change in circumstances to use it as a non-rail freight facility or to convert it to non-rail purposes.

If possible, this paragraph could be eliminated entirely from the agreement because it places a severe impediment on marketability and use of this property.

As to whether the option payment can be lower than the \$95,000 set forth in the Agreement, Conrail and the City can agree to any amount, including no money, if the "magic" words, "intending to be equally bound" are used.

If you have any further questions, please feel free to contact me.

Submitted by:

J. R. PELLEGRINI  
Deputy City Solicitor

RP:rms

cc: Joseph Gariti III, Esquire  
Urban Redevelopment Authority of Pittsburgh

~~1000~~ - ~~Agreement~~

This option agreement, between CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, with its Real Estate system office at Room 901 - 1528 Walnut Street, Philadelphia, Pa., 19102, hereinafter called "Conrail," which has agreed through Kenneth Williams, its Manager-Real Estate, whose office is located at the Jacob Engineering Building, 100 Fleet Street, Pittsburgh, Pa. 15220, and the CITY OF PITTSBURGH, a municipality incorporated under the laws of the Commonwealth of Pennsylvania, with an office at City-County Building, 414 Grant Street, Pittsburgh, Pa. 15219 (hereinafter called "Purchaser") made this                      day of                      1980.

WITNESSETH:

③

That in consideration of the sum of NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$95,000.00) paid to Conrail by the Purchaser, the receipt whereof is hereby acknowledged, Conrail hereby agrees, upon the request of the said Purchaser but subject to approval of Conrail's Senior Management and/or Board of Directors, provided such request shall be made in writing and delivered to the said Conrail on or before 5 p.m., December 31, 1980, to sell and convey to the said Purchaser, all of Conrail's right, title and interest in and to land fronting on Smallman Street, between the 16th Street Bridge and 21st Street, in the Second Ward, City of Pittsburgh, Allegheny County, Pennsylvania, together with the brick warehouse and office building (known as the Pennsylvania Produce Terminal and Fruit Auction House) and approximately 6,000 linear feet of track located thereon (hereinafter called premises);

CONTAINING 11.76 acres, more or less, as shown in yellow outline on print of plan dated February 4, 1980, attached hereto and made a part hereof, for NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$950,000.00); of which 10% being NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$95,000.00) has been paid as hereinbefore mentioned, and the balance of EIGHT HUNDRED FIFTY-FIVE THOUSAND AND NO/100 DOLLARS (\$855,000.00) is to be paid in cash upon delivery of a deed conveying and quitclaiming Conrail's right, title and interest in and to the premises generally hereinbefore described, to said Purchaser, and said deed shall provide as follows:

"THIS INSTRUMENT is executed, delivered and accepted upon the understanding and agreement:


"that Conrail (as Grantor) shall not be liable or obligated to construct or maintain any fence between the land hereinbefore described and land of Conrail (as Grantor) adjoining the same; or be liable or obligated to pay for any part of the cost or expense of constructing or maintaining such a fence or any part thereof; or be liable for any compensation for any damage that may result by reason of the nonexistence of such a fence;

"that Purchaser (as Grantee) shall not have or assert any claim or demand whatsoever for

repair or renewal thereof; and Purchaser (as Grantee) hereby expressly releases Conrail (as Grantor) from liability for any such damages;

"that in the event the tracks of the railroad of Conrail (as Grantor) are elevated or depressed, or the grades of any streets, avenues, roads, lanes, highways or alleys over said railroad in the vicinity of the land hereinbefore described are changed so that they shall pass overhead or underneath the said tracks and railroad, or in the event any grade crossing is vacated and closed, Purchaser (as Grantee), as owner of the land hereinbefore described, shall not ask, demand, recover or receive any compensation whatsoever for any damage of whatsoever nature caused by or in any manner growing out of the separation or change of grades of said railroad and/or said streets, avenues, roads, lanes, highways or alleys or out of the vacation and closing of any grade crossing;

"that should a claim adverse to the title given to Purchaser (as Grantee) be asserted and/or proved, no recourse shall be had against Conrail (as Grantor);

"NOTICE-THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT." This notice is set forth in the manner provided in Section 1 of the Act of September 10, 1965, P. L. 505, No. 155 (52 P.S. 1551)." 

"RESERVING, however, unto said Conrail (as Grantor) the right to use for public delivery purposes the area shown in cross hatch on said plan, together with the right to own, operate and maintain railroad tracks as shown by dash lines within said area as well as the track also shown by dash line along Smallman Street.

"Purchaser (as Grantee) covenants and agrees to continue the basic use of the Produce Terminal Building situate on the premises as a rail freight facility served directly by rail lines and further covenants and agrees not to convert any other space in said building to "non-rail" other than that certain 44,000 square feet currently occupied as such."

Purchaser agrees that within five (5) days after receipt of a copy of this agreement signed by Conrail, it will order a survey and property description of the premises generally hereinbefore described by a licensed or registered surveyor and/or a survey that may be required by the County

required hereunder. Purchaser shall assume the expense of furnishing and performing the foregoing with the understanding that if either Conrail's Senior Management or Board of Directors does not approve and authorize this transaction, Conrail shall not be responsible for any reimbursement whatsoever to Purchaser. In the event Purchaser elects not to order a preliminary title report or other evidence of title, Purchaser agrees to accept said deed and it shall be deemed that Purchaser has waived any and all objections to title.

If this transaction includes buildings, structures or other improvements owned by Conrail, Purchaser agrees to take title to the same subject to any violations of law or ordinances, whether or not such violations are officially recorded, and in an "as is" condition on the title closing date. It is distinctly understood between the parties hereto that if Purchaser shall:

- (a) fail or neglect to furnish the ~~survey data and title report~~ or notify Conrail of ~~Purchaser's election not to furnish same within the~~ <sup>the respective</sup> ~~respective~~ <sup>periods of time</sup> hereinabove specified, or
- (b) fail or neglect to approve a draft of deed within fifteen (15) days after receipt thereof, or
- (c) fail or neglect to complete the transaction by paying the balance of the purchase price and accepting delivery of the title documents within a period of ten (10) days after Purchaser has been advised in writing that such documents are ready for delivery, or
- (d) fail or neglect to complete or perform any other duty or undertaking agreed to herein,

then, in any such event, Conrail, at its option, may declare this agreement terminated and void, and Conrail shall be released from any obligation to convey the premises and shall retain the sum paid herewith as liquidated damages and not as a penalty.

The delivery of the title documents and payment therefor shall take place at a time and place to be mutually agreed upon, but within ten (10) days after receipt of notice from Grantor that deed is ready for delivery and rentals, real estate taxes, special assessments, water and sewer rents, and any other taxes and charges shall be apportioned between Conrail and Purchaser as of the date of transfer of title or settlement.

Conrail shall not be liable for any real estate broker's commission, agent's commission, finder's fee, real estate transfer taxes or recording fees, survey or title company fees in connection with this sale, and Purchaser shall indemnify Conrail against any and all claims for such commission or fees assessed to this transaction.

or the installations of sewers, water or lighting facilities; and, therefore, in the event any such notice respecting the performances and the completion of work required is hereafter received by Conrail or Purchaser or notice of confirmed special assessment is issued to Conrail or Purchaser in connection therewith, it is agreed that Purchaser shall be responsible for compliance with such notice or notices, and shall pay for the work required or the assessment levied therefor.

It is understood between the parties hereto that the selling price is fixed without regard to area and is not to be abated or changed should a survey prove an area different from the area above mentioned.

In the event either Conrail's Senior Management or Board of Directors fails to approve and authorize this transaction as aforesaid, or in the event the conveyance on the terms herein provided would be contrary to any law, regulation or order of governmental authority, then the sum paid on account will be refunded without interest to Purchaser who hereby agrees to accept same, whereupon this agreement shall be cancelled and annulled and neither party hereto shall have any claim whatever against the other by reason hereof.

It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this agreement which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation made by the other which is not embodied in this agreement. The Purchaser has inspected the land buildings, if any, and other improvements if any, included in this transaction and is thoroughly acquainted with their condition.

It is further understood that any conveyance by Conrail shall be made subject to existing tenancy or tenancies, if any; to easements or agreements, if any; to covenants and restrictions of record, if any; to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the property to be conveyed, together with the right to maintain, repair, renew, replace, use and remove same; to all laws and ordinances, including but not limited to zoning or subdivision; to prior approval by State Public Service Commission, Board or Department when applicable; to any state of facts that an accurate survey or an inspection of the property would show.

This agreement may not be changed or terminated orally and any changes must be in writing and agreed to between Conrail and Purchaser. The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties; provided, however, that no assignment hereof shall be made by Purchaser without the prior written consent



AUTHORIZED REPRESENTATIVE, AS AUTHORIZED BY CONRAIL'S SYSTEM REAL ESTATE OFFICE, GIVES WRITTEN NOTIFICATION TO PURCHASER TO THE EFFECT THAT THIS TRANSACTION HAS RECEIVED THE NECESSARY APPROVAL AND AUTHORIZATION OF CONRAIL'S SENIOR MANAGEMENT AND/OR BOARD OF DIRECTOR AND THAT CONRAIL IS LEGALLY BOUND.

Signed & Sealed in the Presence of:

Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attest: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_  
Secretary \_\_\_\_\_ (SEAL)

CONSOLIDATED RAIL CORPORATION

By: \_\_\_\_\_  
Manager-Real Estate

(Insert money paid in account)

In the event Purchaser fails by 12-31-80, to exercise its rights to purchase the said premises the sum of \$95,000. paid in consideration for such rights shall be retained by Conrail as compensation for said option.

From the Pittsburgh Business Times:  
<http://www.bizjournals.com/pittsburgh/stories/2010/03/08/daily21.html>

## Pittsburgh unveils plans for Allegheny Riverfront

Pittsburgh Business Times - by Tim Schooley

Date: Tuesday, March 9, 2010, 1:16pm EST

### Related:

Commercial Real Estate, Economic Snapshot

Mayor Luke Ravenstahl and the **Urban Redevelopment Authority** presented a map to guide new development in what is expected to be a decades-long process of bringing the city back to an Allegheny riverfront long barricaded by industrial use.

On Thursday, the Urban Redevelopment Authority board is expected to ratify an agreement with the Buncher Co., which owns major swaths of property along the Allegheny River, to implement a redevelopment strategy that could bring 1,000 units of housing to the riverfront between 11th and 21st streets, and bring a new industrial flex use to a now-cleared former mill site at 62nd Street.

The partnership between the URA and Buncher calls for a broad redevelopment strategy of three major parcels of Allegheny riverfront property totaling 80 acres, two owned by Buncher and one by the URA.

State senator Jim Ferlo, whose district includes most of the Strip and Lawrenceville along with a variety of other riverfront communities, sees potential to begin what he called a transformative process soon because of the scale of the properties involved.

"We're going to rock 'n roll a lot sooner because we have site control on significant portions," Ferlo said.

Stephen Quick, a principal with **Perkins Eastman**, the architecture firm which conducted the Allegheny River Visioning plan launched by the URA last year, called the properties involved the largest in the country available for development.

Calling the partnership an historic and exciting opportunity to connect city neighborhoods to the riverfront, Ravenstahl said, "we are going to unlock the potential of this portion of the riverfront."

Rob Stephany, executive director of the URA, and a Lawrenceville resident, expects the first to see significant development activity will be at the 22-acre former Tippins steel site the URA has acquired and cleared at 62nd and Butler Streets in Lawrenceville. The agreement, said Stephany, calls for the URA to grant development rights to Buncher, which is expected to develop up to 150,000 square feet of industrial flex space at 62nd Street with the intention of drawing tenants from riverfront property elsewhere along the Allegheny riverfront area, who will want to access the site's proximity to the highway system across the 62nd Street Bridge.

In exchange, the URA expects to establish an option on Buncher's riverfront property between 43rd and 48th Streets, on which Buncher now has a flex warehouse but that the city plans to redevelop into new mixed uses of housing and flex office space.

Perhaps the parcel with the most potential is the 40-acre riverfront stretch Buncher owns between 11th and 21st streets in the Strip, much of which is now used as surface parking lots behind the five-block-long Pennsylvania Fruit Auction & Sales Building. The partnership between the URA and Buncher calls for the development of a street grid, plumbing and other infrastructure on the site as well as converting the fruit auction building from its current use by produce wholesalers into a new retail structure that would serve a new housing development behind it.

The plan calls for establishing some kind of street passage through the building and working closely with the tenants in the building to find them a new location nearby in which to operate. The city estimates that the Strip District site will cost more than \$20 million for

street construction as well as other remediation and preparation costs. Stephany and Ferlo expect to generate funding from a variety of public and private sources, including Tax Increment Financing.

Stephany expects the eventual redevelopment of the 11th to 21st street site, on which Buncher has already developed a **Hampton Inn Hotel** and a small office building, will eventually result in the sale of the fruit auction building to Buncher.

Tom Balestrieri, president of the Buncher Company, said he didn't know yet whether his company expected to develop housing itself on its Strip District property or will seek to partner with another developer.

Noting the agreement with the URA is at Letter of Intent stage pending a board vote on Thursday, he suggested it was too early to offer more specifics.

"We do what we feel we can do right," he said.

The URA-Buncher partnership comes as the Allegheny River Visioning plan nears its completion. According to the market value analysis conducted through the Allegheny Riverfront Vision plan, the proposed redevelopment could create approximately 5,000 new jobs and more than \$6 million in annual tax revenue for the city.

tschooley@bizjournals.com | (412) 208-3826

post-gazette.com BUSINESS

## URA approves deal for Strip development

Friday March 12, 2010

By Mark Belko Pittsburgh Post-Gazette

The city's Urban Redevelopment Authority board on Thursday advanced a proposed partnership with a local developer to transform 80 acres along the Allegheny riverfront from the Strip District to Lawrenceville.

Board members unanimously approved a letter of intent with the Buncher Co. to enter into an agreement to collaborate on redeveloping the URA-owned produce terminal in the Strip and Buncher property behind it as well as two parcels in Lawrenceville, one owned by the developer and one by the URA.

The city envisions riverfront housing, commercial and industrial development, and recreational amenities along the 6.5-mile stretch from Downtown to Highland Park. One key goal of the plan is to reconnect portions of Lawrenceville and the Strip to the river.

"This is really a regional transformative type of project along the Allegheny River," said state Sen. Jim Ferlo, a URA board member.

While the plan could take years or decades to develop, some elements already have emerged. A proposed master plan envisions about 1,000 units of riverfront housing on Buncher property in the Strip District behind the produce terminal. More housing would dot the river bank in Lawrenceville. There also is talk of a new trolley line possibly linking the Strip and Lawrenceville.

One controversial element of the plan involves the iconic produce terminal. Wholesalers, some of whom have been there decades, fear they will be kicked out and relocated once their leases expire in 2012.

However, URA board chairman Yarone Zober, chief of staff to Mayor Luke Ravenstahl, said after Thursday's meeting that "right now there are no plans to move out any wholesalers."

Mr. Zober said the city would be working with the merchants, Neighbors in the Strip, and the Buncher Co. to determine the "highest and best use" of the site.

But like the mayor on Tuesday, Mr. Zober would not guarantee that the produce wholesalers would remain once their leases expire, repeating only that right now there are no plans to move anyone.

An issue that could touch a nerve with preservationists are renderings that show sections of the terminal removed to allow for streets to be extended from the heart of the Strip to the riverfront.

The Buncher Co. has discussed such a possibility in the past, saying the long five-block terminal poses a barrier to development.

Mr. Zober said removing sections of the terminal to create pass-throughs is "certainly something we're considering." But he added there are still marketing studies to be done to determine uses for the terminal as well as historical issues to be examined.

"Right now everything is preliminary," he said.

Also Thursday, the board approved a series of financial transactions relating to the new Target store in East Liberty, including a \$2.5 million Pittsburgh Development Fund loan. Developer Mosites Co. hopes to close on the Target deal in the next couple of months and get the \$25 million store construction started this summer.

The board also approved a \$1 million loan to an affiliate of the Soffer Organization to help complete financing for the \$8 million Toby Keith I Love This Bar and Grill restaurant at SouthSide Works.

Mark Belko

or 412-263-1262

"Money Q&A" and "Company Town" are featured exclusively at PG+, a members-only web site of the Pittsburgh Post-Gazette. Our introduction to PG+ gives you all the details.



## **MAYOR ANNOUNCES URA / BUNCHEER PARTNERSHIP READY TO MOVE ALLEGHENY RIVERFRONT DEVELOPMENT FORWARD**

Published: December 9, 2010

Mayor Luke Ravenstahl today announced that the City is about to take a critical step toward reconnecting the Strip District neighborhood to the Riverfront. Upon approval from its Board of Directors, the Urban Redevelopment Authority (URA) will lease, with the option to purchase, the Produce Terminal to The Buncher Company. The lease will run for five years with the purchase price being \$1.8 million.

"This is a transformative moment for the City," said Ravenstahl. "We have the opportunity to be a model for riverfront redevelopment, setting the standard for cities across the globe. The Strip District has always been an international destination for shoppers, and by recognizing the new demand for residential addresses that will have front door access to the diverse array of merchants on Penn Avenue, and a backyard that enjoys the beauty of the Allegheny, we are on the verge of leveraging more of what makes the Strip such a special place while enhancing what makes it so unique.";

The Buncher Company has already begun related planning processes, and has hired DL Astorino Architects to design a masterplan for the 55 acres of surface lot parking behind the building. The master plan will include space for at least 75 units of residential rental space on the river's edge. MacLachlan, Cornelius & Filoni Architects, Inc will work with The Buncher Company and the Urban Redevelopment Authority on the renovation and preservation plans for the Produce Terminal. Once all plans are complete, The Buncher Company will determine if they will move forward with the purchase of the facility.

"Our intent is to preserve the integrity of the property, while breathing new life into the neighborhood," said Tom Balestrieri, President of The Buncher Company. "It is our hope that our redevelopment strategies will align with the community's interest and benefit the City of Pittsburgh."

The Buncher Company will manage the property and all existing tenant leases will be honored through 2012.

"I really feel we're at a rare moment when this building is near the end of its useful life, and is ready for its reincarnation," said Rob Stephany, URA executive director. "It's exciting that The Buncher Company is ready to move on this project and has assembled a team of grade-A talent to boot.";

State Senator Ferlo added, "This is a great opportunity to begin developing Pittsburgh's last frontier on its river fronts. The Allegheny River from the Strip District to the Highland Park Bridge represents enormous opportunity. The Buncher property and adaptive re-use of the underutilized Terminal Building

coupled with the master planning activities that the Mayor and I have pushed for will produce economic activity for decades to come."

"The agreement between the Buncher Company and the Strip District is representative of the positive that can come when the public and private sectors meet towards a common goal," said Councilman LaVelle. "We have been given an opportunity to develop one of the most underutilized parcels in the City of Pittsburgh, a prospect that could generate millions in revenue for Pittsburgh.";

"We have been working on a month-to-month basis with the URA on strategies as well as opportunities to upgrade our facilities, grow our businesses and become more competitive in the marketplace," said Linda Sasinoski who runs JE Corcoran Company, produce wholesaler.

"We look forward to working with The Buncher Company on the development of their property and helping the Strip to rediscover its riverfront," said Becky Rodgers, executive director, Neighbors in the Strip.

The URA Board of Directors will meet this Thurs., Dec. 9 at 2 p.m.

**Contact:**

Joanna Doven

Press Secretary

Office: 412-255-2694

Cell: 412-475-2387

Email: [mjoanna.doven@city.pittsburgh.pa.us](mailto:mjoanna.doven@city.pittsburgh.pa.us)

Gigi Saladna, URA

Office: 412-255-6434

Cell: 412-304-4042

Email: [gsaladna@ura.org](mailto:gsaladna@ura.org)

From the Pittsburgh Business Times:  
<http://www.bizjournals.com/pittsburgh/news/2010/12/09/buncher-plans-project-for-strip.html>

## Buncher plans project for Strip District's Fruit Auction Terminal Building

Pittsburgh Business Times - by Tim Schooley

Date: Thursday, December 9, 2010, 10:27am EST

### Related:

Commercial Real Estate, Retailing & Restaurants, Residential Real Estate

In a bid to spark a transformational wave of development in the Strip District, Pittsburgh's **Urban Redevelopment Authority** will vote on a plan to beat a path to the Allegheny riverfront this week through the red brick walls of the Pennsylvania Railroad Fruit Auction Terminal Building.

At its board meeting scheduled for Thursday, Dec. 9, the URA is expected to vote for the city to enter into an agreement in which it would lease the six-block-long building to the Buncher Co., giving the local development company an option to buy the property. A vote of approval by the mayor-appointed board is expected to provide Buncher with the opportunity to develop the building in tandem with a 75-unit apartment project on riverfront land Buncher owns behind the building, according to URA Executive Director **Rob Stephany**.

Stephany described the plan as a key move to kick-start development of approximately 55 acres Buncher owns that extend along Smallman Street and the Allegheny River from 11th to 23rd streets, a tract of largely undeveloped urban land he believed is as large as any of its kind in the country.

"The produce terminal is kind of at the end of its useful life. It needs to be part of something bigger," Stephany said. "My gut tells me there's a real strong appetite by the Buncher Co. to really begin this project in earnest."

Calls to Buncher were not immediately returned.

Stephany said Buncher has demonstrated its commitment to push forward with development there by hiring **MacLachlan, Cornelius & Filoni Inc.** to handle the preservation and design for the renovation of the 130,000-square-foot terminal building, a project he estimated will cost from \$7 million to \$10 million. The redevelopment of the terminal building, now home to number of produce wholesalers as well as the Pittsburgh Public Market, which opened a few months ago, will serve as a gateway project that should allow Buncher to begin to develop the 12 to 15 acres behind it that have been largely blocked from any new plans by the building.

The redevelopment will include building two access routes through the property, Stephany said, which he said was a requirement for making any new project behind the building viable.

"It's so big and so long, if you did two penetrations to it, it's almost negligible from an impact standpoint," Stephany said, predicting the changes will concern preservationists.

**Art Ziegler**, president of **Pittsburgh History & Landmarks Foundation**, said his organization is supportive of the goal of redeveloping the building as well as establishing access through the building to enable development behind it, as long as that access is for pedestrians.

"We think that the building can be a landmark for the new project. It frames and defines the project," Ziegler said. "We do not object to a pedestrian passage and maybe two. Our only objection is to make roadways (for cars) through the building."

The building transaction is part of a larger collaboration between the city and Buncher. In the summer, the city reached an agreement with Buncher for a swap of properties that included the terminal building, a riverfront warehouse building in the 9th ward of Lawrenceville and the former Tippins steel property on the riverfront at the 62nd Street

Bridge in Lawrenceville's 10th ward.

Stephany said the URA continues to work with the building's established produce wholesalers to identify potential new locations for them. He expects the building will be redeveloped for a host of office users, restaurants, studios and other uses, noting the terminal's four-foot elevation above Smallman Street likely won't work for retail. The infrastructure costs for the project have not yet been determined, Stephany said.

The URA also is working to establish a district for tax increment financing and redevelopment for the Strip District. Those proposals drew strong neighborhood criticism at a planning hearing on Dec. 7, and Stephany emphasized the TIF district and redevelopment zone are under consideration to improve the neighborhood's eligibility for state and federal funds — and not for eminent domain.


Stephany said there is nothing in the city's agreement with Buncher that guarantees the new Pittsburgh Public Market will remain in the building but that both the URA and Buncher are excited about its start and see it as part of a larger redevelopment plan. The time frame for Buncher's development is not yet set.

"The end result of this isn't going to be known for a while," Stephany said.

**Chuck Hammel**, an owner of the nearby Cork Factory apartment building, described the URA's plan to turn the terminal building over to Buncher as an important step in bringing new development to the neighborhood's riverfront. One possible hurdle, he said, will be reaching a final agreement between Buncher and the Allegheny Valley Railroad over right-of-way issues, something Hammel hopes will be resolved for the good of everyone involved.

Hammel is working to develop a 90-unit apartment project near the almost fully occupied Cork Factory and said there is a steady influx of would-be tenants for more housing in the area.

"We have probably 20 to 30 people who look at the Cork Factory each week," he said. "There's a fair amount of out-of-town people being located here."

 Tim Schooley covers retail, real estate, small business, hospitality and media for the Pittsburgh Business Times. Contact him at [tschooley@bizjournals.com](mailto:tschooley@bizjournals.com) or (412) 208-3826.



post-gazette.com BUSINESS

## URA accepts deal for Strip District landmark

Friday, December 10, 2010

By Mark Belko, Pittsburgh Post-Gazette



Rebecca Droke/Post-Gazette

The URA gave a five-year lease to the Buncher Co. to manage the 80-plus-year-old produce terminal on Smallman Street.

City Urban Redevelopment Authority board members approved a five-year lease with the Buncher Co. Thursday to take over the Strip District's historic produce terminal, and vowed to take care of the wholesalers that work from it, even if it means moving them.

Under the agreement, approved unanimously, Buncher would have the option to purchase the 80-plus-year-old Strip landmark for \$1.8 million. But if it exercises that right, it also must build at least 75 units of housing on the Allegheny riverfront behind it.

Buncher will pay the URA \$15,275 a month to lease the facility, where the wholesalers have been a big part of the Strip's character for the last century.

URA officials trumpeted the agreement as the first tangible piece of action in Mayor Luke Ravenstahl's plan to redevelop 80 acres of land along the Allegheny River from the Strip to Lawrenceville.

"I can't remember doing something this exciting in the four to five years I've chaired this board," said chairman Yarone Zober, Mr. Ravenstahl's chief of staff.

But Mr. Zober acknowledged that transformation won't take place without "pain for some."

That likely will include the wholesalers that remain in the terminal. They probably will be forced to give up the spots they've held, some for decades, once their leases expire in 2012.

Nonetheless, Mr. Zober and others promised to commit whatever resources are necessary to find "a good place" for those tenants. He said he's even willing to use the \$1.8 million the URA would get from the sale of the building to make that happen.

"These folks deserve a better location than they're at now," he said. "I commit the resources to do that."

Likewise, city councilman R. Daniel Lavelle, a URA board member, pledged to take care of wholesalers.

"We're not looking to harm the tenants in any way. We will work with them to make sure their businesses are viable," he said.

One wholesaler has described a potential relocation as an "injustice," given the impact the group has had on the Strip and its history. Others have expressed concern about being relocated outside of the neighborhood. One site under study is in Lawrenceville.

Joe Jackovic, executive vice president and general counsel for Buncher, said the fate of the wholesalers and the terminal will

be decided with the help of consultants.

He noted that all wholesalers will be staying at least until their leases expire in 2012. Buncher decided to lease the building as part of the "development process," he said.

The company would like to consider other uses for the terminal as part of its plan to redevelop 55 acres of parking behind it into housing.

Mark Belko

or 412-263 1262

# PITTSBURGH TRIBUNE-REVIEW

## Strip District development depends on state approval

Matthew Spatter and Sam Spatter  
PITTSBURGH TRIBUNE-REVIEW  
PITTSBURGH, Pa.

A major development that officials hope will set off a "domino effect" of investment in the Strip District depends on getting state approval to knock down a block of the iconic Pennsylvania Produce Terminal building.

The Buncher Co. wants to demolish the portion of the building near the 16th Street Bridge to extend 17th Street toward the Allegheny River and provide better access to 35 acres Buncher owns between the produce terminal and the river. The company wants to develop that site, which the Urban Redevelopment Authority of Pittsburgh sees as the first step toward reviving six miles of riverfront.

Before it can buy the Smallman Street building from the URA, relocate tenants and start demolition, Buncher must get approval from the state Historical & Museum Commission, which must sign off on alterations to historic properties that involve federal funding. The URA purchased the building, which dates to the 1920s, with federal money in the 1980s and leased it to Buncher in December with the option to sell.

The demolition would require relocating wholesalers and the Pittsburgh Public Market, which was added to the 16th Street end of the building last year at a cost of \$1.3 million in city, state, federal and foundation grants.

"If this becomes a reality, I think you'll see a lot of pent-up demand," said Buncher CEO Tom Balastrieri, who said he helped his uncles buy fruit from the produce terminal as a boy. "People who own properties on Smallman, on Penn (Avenue) will start making improvements, do warehouse conversions, bring in new restaurants. ... If we can't take that (block) down, then our vision, our dream is really damaged."

The portion of the building that could be demolished was added in the 1930s. The addition was shortened slightly in the 1980s so trucks could drive around to the back, and it sits on top of sewer lines Buncher hopes to replace.

"Part of the building will be lost, and of course we regret that loss, but we understand it's part of a larger goal of moving the rest of the project forward," said Dan Holland, president of the Young Preservationists Association of Pittsburgh. "We are pleased they've made a commitment to restoring the remaining portion of the building."

The Pittsburgh History & Landmarks Foundation, though, considers the

produce terminal "the defining building of the Strip and an extraordinary work of architecture for our city," said President Arthur Ziegler.

"Our hope is to find a way to save the entire building and at the same time give the Buncher Company the access it needs for their development effort that will greatly enhance Strip and the use of the riverfront," he wrote in an e-mail message yesterday.

The Allegheny Riverfront Vision Plan that city officials released last month noted the importance of "demonstration projects" like Buncher's in attracting more private investment to the waterfront, which the study noted was blocked off from surrounding neighborhoods by vacant land and industry.

Balastrieri said purchasing the property would put the produce terminal back on the tax rolls and developing it would put more taxable office and retail space along Smallman Street.

URA Executive Director Rob Stephany said the project could generate at least \$6 million in real estate taxes, plus wage taxes of any residents moving in from outside the city. A more complete economic study is under way, he said.

The produce terminal project received a \$15 million state grant in the last month of Gov. Ed Rendell's administration.

Buncher plans to submit its application to the Museum Commission within a month and could start utility work within six months if approval appears to be moving along quickly, Balastrieri said.

According to concept plans shared with the Tribune-Review, the developer would build at least 75 apartments along the water; an office and retail building would go in along Smallman Street next to the bridge; and the remaining five blocks of the terminal would be renovated and updated as either modern warehouse space or retail and restaurants, said Michael E. Kutzer, director of business development for Buncher. Railroad Avenue would be extended behind the terminal, and large public plazas would lead toward the river, Kutzer said.

Several wholesale businesses occupy about 75 percent of the building. They could either relocate to the renovated space or move with URA assistance to other space in the Strip District or Lawrenceville.

Brad Kokowski, owner of Superior Produce, said he was initially upset by the prospect, but the alternative could be a larger, more modern space.

"Nobody's really happy about having to leave the Strip. ... We get a lot of people who just walk in off of Penn," he said. "But I've been trying to keep positive about it: I could get a lot more parking, fit more people."

The Public Market would move to the 21st Street end of the building adjacent to the Society for Contemporary Craft. The move could give the market more space for vendors and features like a demonstration kitchen, said Becky

Rodgers, executive director of the group Neighbors in the Strip.

The project would strive to maintain the Strip District's character, like finishing the office building with brick, keeping parking along Smallman Street to encourage shoppers, and improving pedestrian connections to the hustle of Penn Avenue and the tranquility of the riverfront trail, Kutzer said.

"With the development of additional residences, you'll be bringing more people to the river, new residents will be using the existing shops on Penn Avenue, and it brings more to the Strip," Rodgers said.

"The Strip is a wholesale area, not just here at the produce terminal. ... It'll be important to maintain that. That's what gives the Strip its special appeal."

*Matthew Santoni and Sam Spatter can be reached at or .*

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## Pittsburgh - "Bridge to Nowhere"

Pittsburgh had a real "Bridge to Nowhere." The main span of the Fort Duquesne Bridge over the Allegheny River was completed in 1963. Land for the approaches had not been acquired, so the bridge stayed like this for five years.

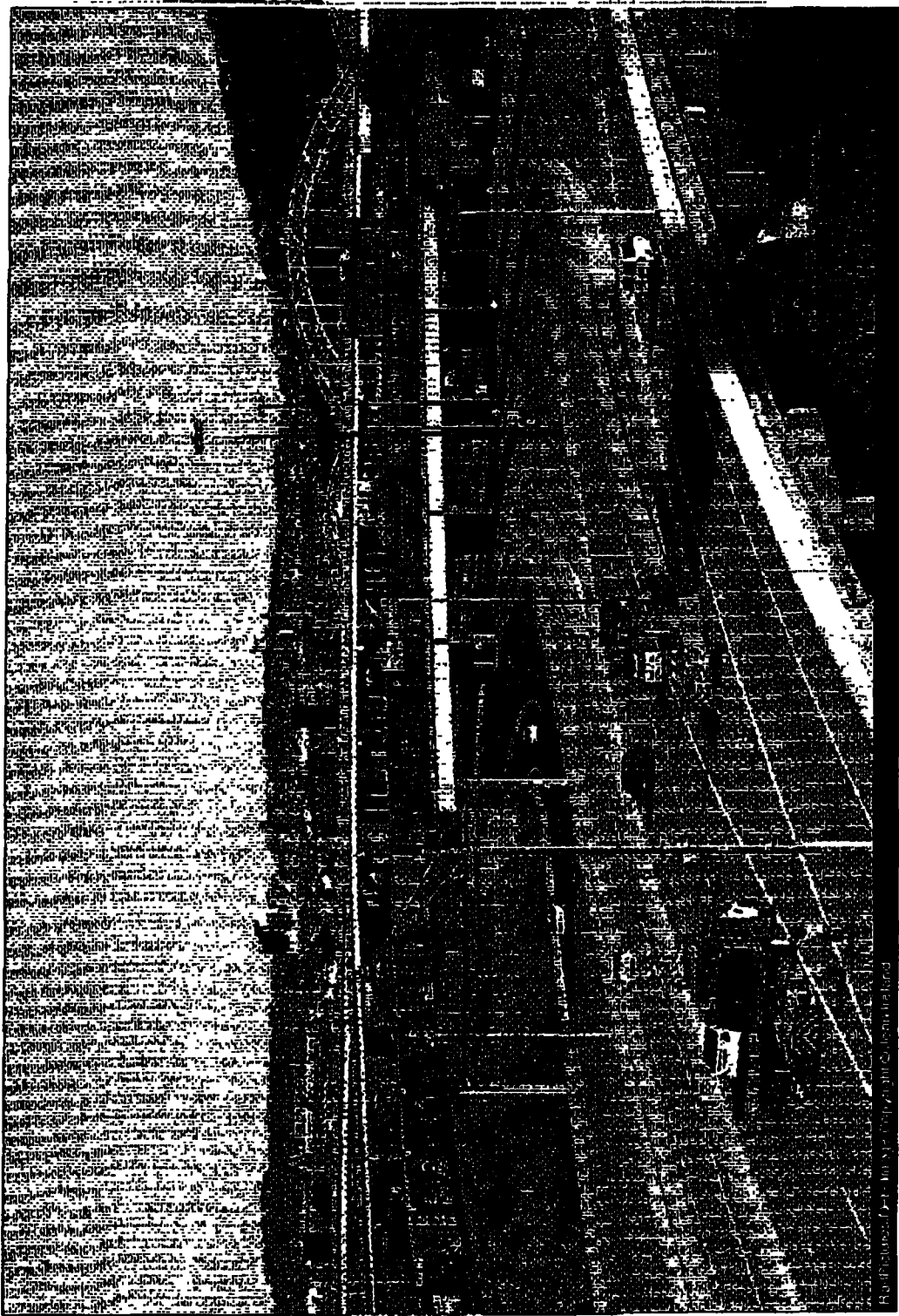
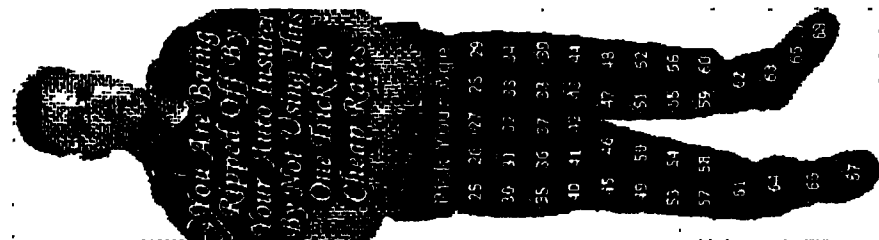
The bridge was finally completed in 1968. It now carries Interstate Highway I-279. There are two deck traffic.



Aerial of Pittsburgh with interstate 278

<http://pittsburghskyline.com/content/2006/06/25/downtown-pittsburgh-aerial-photographs/>

4/22/2011



**Locomotive Details**

- » [Allegheny Valley Railroad \(more...\)](#)
- » [EMD GP11 \(more...\)](#)

**Locomotive No./Train ID**

- » [AVR 2007 \(more...\)](#)
- » [NS KC32 \(more...\)](#)

**Location/Date of Photo**

- » [NS Fort Wayne Line \(more...\)](#)
- » [Pittsburgh, Pennsylvania, USA \(more...\)](#)
- » [December 03, 2008](#)

**Photographer**

- » [John Ireland \(more...\)](#)
- » [Contact John Ireland](#)



COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF ALLEGHENY )

May 6, 2011  
DATE

Russell Peterson  
SIGNATURE

Seth A. Pankratz  
NOTARY PUBLIC



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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**FINANCE DOCKET NO. 35239**

**ALLEGHENY VALLEY RAILROAD COMPANY –  
PETITION FOR DECLARATORY ORDER**

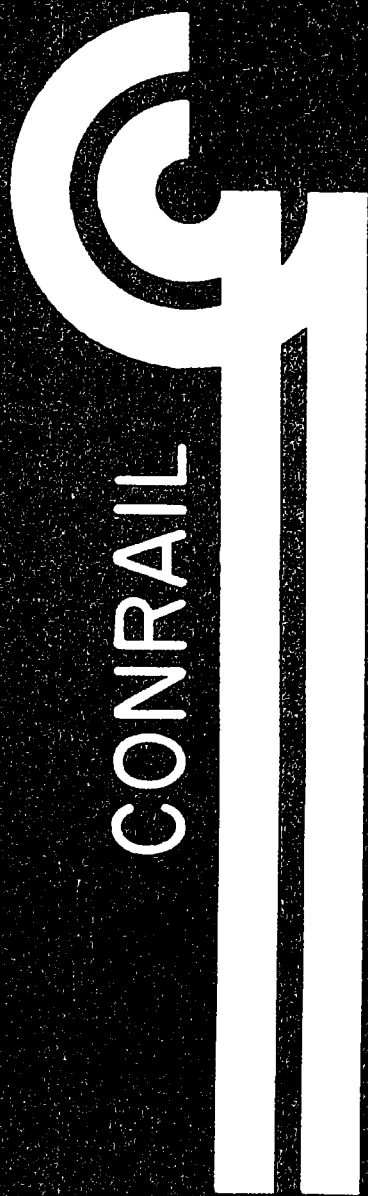
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**VERIFIED STATEMENT OF GERHARD M. WILLIAMS, JR.**

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My name is Gerhard M. Williams, Jr. I retired from Consolidated Rail Corporation in 1995 and consulted for CSX Transportation, Inc. until 1998. My career in the railroad industry has spanned twenty years. In 1984, I was Conrail's Assistant Vice President for Regional Market Development. In that position, I was involved in Conrail's NERSA abandonment program which included the abandonment of Conrail tracks and rail facilities in the Pittsburgh Strip District. I have been asked by Allegheny Valley Railroad Company ("AVRR") to review the 1984 abandonment applications filed by Conrail with the Interstate Commerce Commission in ICC Docket Nos. AB167 (Sub Nos. 558N, 571N, 572N and 641N) together with the related internal Conrail correspondence and memoranda attached to those Applications. I am the "G.M. Williams, Jr." noted on the internal Conrail memoranda concerning these abandonment applications and I signed the verifications for the Conrail abandonment applications referred to above. I am authorized to make this Verified Statement on behalf of Allegheny Valley Railroad Company.

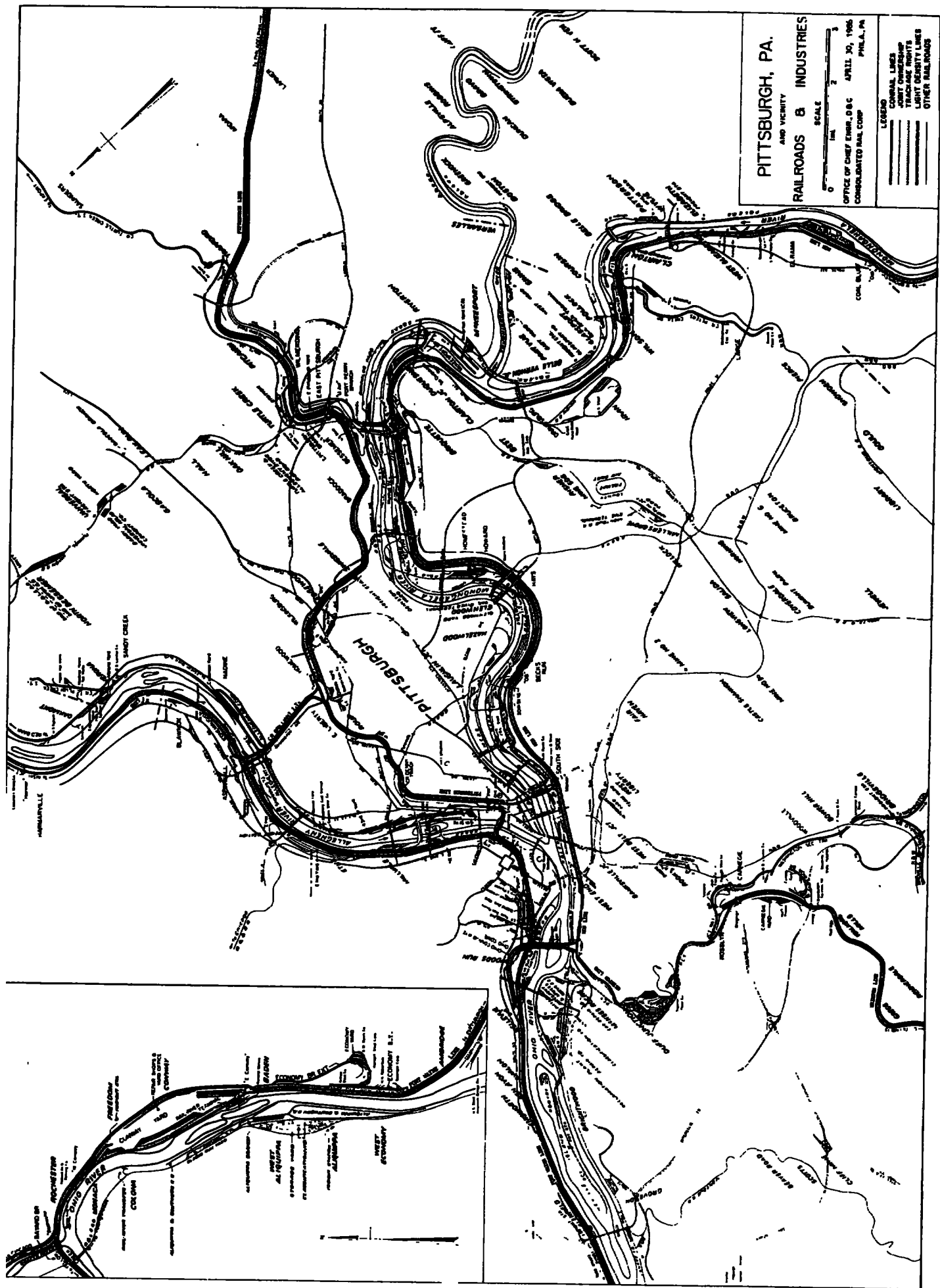
The purpose of this Verified Statement is to describe to the Surface Transportation Board the background and relationship between the four Conrail abandonment applications noted above



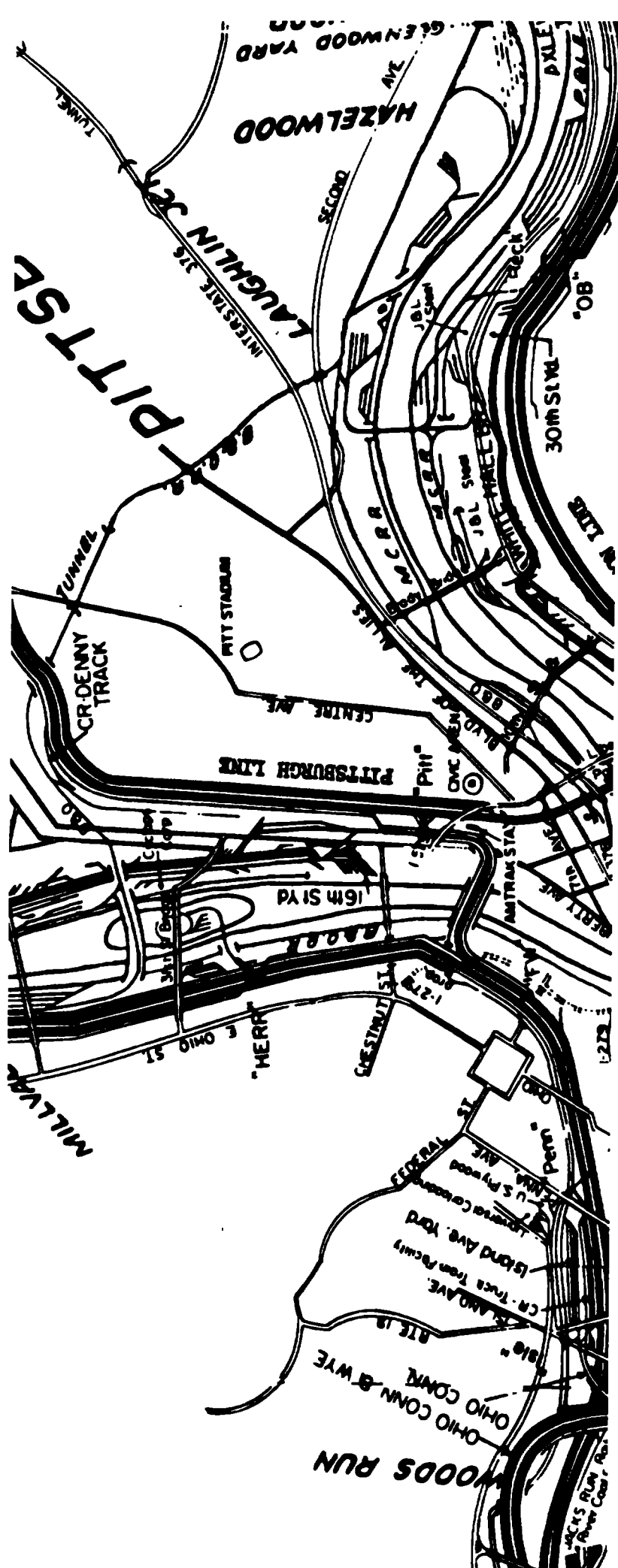
MAINTENANCE PROGRAM  
AND  
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CENTRAL REGION  
PITTSBURGH DIVISION

1986

Exhibit K







007

**V7028**  
**PITTSBURGH**

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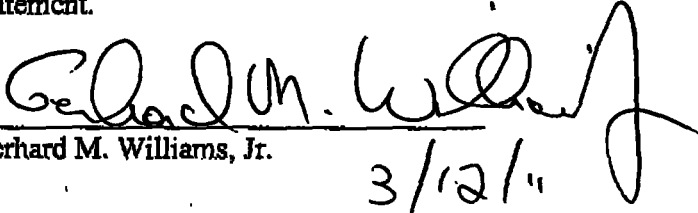
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VERIFICATION

I, Gerhard M. Williams, Jr., verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file the foregoing Verified Statement.

  
Gerhard M. Williams, Jr.

3/12/11



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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**FINANCE DOCKET NO. 35239**

**ALLEGHENY VALLEY RAILROAD COMPANY –  
PETITION FOR DECLARATORY ORDER**

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**II. LEGAL ARGUMENT- REMANDED PROCEEDING**

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I. Buncher’s additional evidence and AVRR’s additional testimony regarding the three Smallman Street abandonment notices in AB167 (Sub Nos. 571N, 572N and 641N) confirm that the Board reached the proper resolution of this dispute in its June 15, 2010 decision.

- a. The STB has jurisdiction over the disputed permanent rail easement because it is part of a railroad line, not excepted track.

The acquisition or abandonment of a “railroad line” is a transaction subject to the jurisdiction of the Surface Transportation Board. 49 U.S.C. §§10901, 10903. However, §10906 creates an exception, not to the Board’s Chapter 109 licensing jurisdiction, but rather to the requirement for a railroad to seek STB approval to acquire, abandon or discontinue a “spur, industrial, team, switching or side track.” Thus, the tracks designated by §10906 remain subject to STB jurisdiction for all railroad regulatory purposes but do not require Board approval or exemption to be constructed or abandoned. United Transportation Union – Illinois Legis. Bd. v. STB, 183 F.3d 606, 612 (7<sup>th</sup> Cir. 1999); Port City Properties v. Union Pacific Railroad Co., 518 F. 3d 1186 (10<sup>th</sup> Cir. 2008)

It is therefore important to distinguish between a “railroad line” and “spur, industrial, team, switching and sidetrack” in determining whether or not abandonment authorization must be obtained from the Board. 49 U.S.C. §10102(6)(B) and (C) states that a “railroad” includes

“the road used by a rail carrier and owned by it or operated under an agreement;” as well as “a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;”. 49 U.S.C. §10102(9) defines “transportation” to include “a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail regardless of ownership or an agreement concerning use;”. It has long been recognized that the statutory definition of “railroad” includes “a switch, spur, track, terminal, terminal facilities or freight depot and yards” any one of which may be part of a “railroad line”. ICC v. Memphis Union Station Co., 230 F. Supp. 456, 463, (D.C. Tenn. 1964). In Detroit & M. Ry. Co. v. Boyne City, G. & A. R. Co., 286 F. 540 (1923) the Court stated:

I will not at this time attempt to state a definition of the term “spur track” which will necessarily be exact and complete in all cases, but in my opinion the distinguishing feature between “extensions” and “new lines” on the one hand, and “spur, industrial, team, switching or side tracks,” on the other, as used in this statute, is this: That the former are tracks over which there are to be train movements in the sense that such movements are a part of the actual transportation haul. This track seems to be for the regular train haul in transportation proper rather than those incidental services characteristic of the tracks named as being excepted from the requirements of the act. Considering all of the facts and circumstances of the present case, including the proposed operation of entire trains over the proposed track and the main line of defendant in continuous transportation and without switching movements or charges; considering the sidings and public loading stations to be constructed and used in connection with said track; considering the expense of the proposed undertaking; considering the competitive character and the results of the contemplated use and operation of said track and trains; considering the fact that the proposed track and train service will be between points where the competing railroad now operates a regular train service; and in view of the entire record, I reach the conclusion that such proposed track has the characteristics of, and constitutes, not a “spur track,” but a new “line,” more specifically, an extension or a branch line. Akers v. United N.J.R. & Canal Co., 43 N.J. Law, 110; Illinois Central R.R. Co. v. Sioux Falls Quarry Co., 33 S.D. 63, 144 N.W. 724; Memphis v. St. Louis & San Francisco R.R. Co., 183 Fed. 529, 106 C.C.A. 75 (C.C.A. 6).

Thus, courts, the Interstate Commerce Commission and the STB have long examined how a disputed track is operated and used by the railroad to determine whether it is a “railroad

line” which requires STB abandonment authorization or a track to which the §10906 exception applies. This assessment is not subject to strict rules but requires the Board to evaluate the facts and circumstances in each proceeding on a case by case basis. Nicholson v. ICC, 711 F. 2d 364, 367(D.C. Cir. 1983), cert denied 464 U.S. 1056 (1984). The determination of whether a particular track segment is a “railroad line” ... or a “...switching ...” track.... turns on the intended use of the track segment, not on the label or cost of the segment.” Id. at 367; New Orleans Terminal Co. v. Spencer, 366 F. 2d 160, 165-66 (5<sup>th</sup> Cir. 1966) (holding that tracks’ predominant use for through movement of freight brings their abandonment within ICC jurisdiction), cert. denied, 386 U.S. 942, (1967); ICC v. Memphis Union Station Co., 360 F. 2d 44, 50-51 (6<sup>th</sup> Cir. 1966) (concluding that “the use of these tracks as an integral part of railroad systems developed to accommodate interstate commerce” determines their jurisdictional status), cert. denied, 385 U.S. 830, (1966); Executives Ass’n v. City of Galveston, 849 F.2d 145, 148 (5<sup>th</sup> Cir. 1988) (holding that jurisdictional status of track determined by use and intended use), vacated on other grounds, 492 U.S. 901, (1989)

- b. In AB 167 (Sub No. 558N), Conrail sought abandonment authorization only for the Valley Industrial Track from its connection with the lower deck of the Ft. Wayne Bridge to 21<sup>st</sup> Street.

Buncher has claimed that Conrail sought ICC abandonment authorization for the Valley Industrial Track (Track 8) between 21<sup>st</sup> and 16<sup>th</sup> Street in AB167 (Sub No. 558N). This assertion however necessarily concedes that Track 8 and the permanent rail easement between 21<sup>st</sup> and 16<sup>th</sup> Street was used by Conrail as a “railroad line” because were it not, Conrail could have simply sold that track to Buncher without ICC abandonment authorization as it did for the adjacent Tracks 6 and 7. However, AVRRA has demonstrated that in 1984 the Valley Industrial Track or

“Cluster” consisted of two railroad lines in the Pittsburgh Strip District<sup>1</sup>. The main Conrail line thorough the Pittsburgh Strip District connected to the lower deck of the Ft. Wayne Bridge at 11<sup>th</sup> Street and then extended along the south side of the Pittsburgh Produce Terminal up Smallman Street to a connection with the Railroad Street line at 29<sup>th</sup> Street. At that connection, a second rail line from New Kensington, PA extended along and in Railroad Street from 29<sup>th</sup> Street back down to 16<sup>th</sup> Street on the north side of the Produce Terminal. It is therefore evident from an examination of Conrail’s abandonment application that the track for which abandonment authorization was sought in AB167 (Sub No. 558N) was described as “connecting to the Ft. Wayne Bridge and extending to 21<sup>st</sup> Street”. This describes Conrail’s main line track up Smallman Street on the south side of the Produce Terminal, because in 1984, there was no track from the lower deck of the Ft. Wayne Bridge at 11<sup>th</sup> Street connecting to Track 8 at 16<sup>th</sup> Street on the north side of the Produce Terminal<sup>2</sup>.

The reason Conrail sought to abandon the Smallman Street track from 11<sup>th</sup> Street to 21<sup>st</sup> Street in AB167 (Sub No. 558N), was because construction of Interstate 279 on the North Side of Pittsburgh (north of the Allegheny River) required the removal of the lower bridge deck approach to the north end of the Ft. Wayne Bridge in order to provide adequate vertical clearances for the new interstate highway. This rendered useless both the lower deck of the Ft. Wayne Bridge and the Smallman Street track (which connected to the lower deck of the bridge at 11<sup>th</sup> Street on the south end of the bridge) as a through route to serve the Pittsburgh Strip District and the rest of Conrail’s line extending from the Strip District along the Allegheny River to New Kensington and beyond. To preserve rail service to its Strip District - New Kensington rail line, in 1983

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<sup>1</sup> See also Buncher Exhibit A, Page 78 which confirms that Conrail referred to its tracks in the Strip District as the Valley Industrial Cluster.

<sup>2</sup> Buncher was fully aware of this fact having acquired the property between 11<sup>th</sup> and 16<sup>th</sup> Street from the Penn Central Trustees. Verified Statement of Joseph M. Jackovic, June 2, 2009, Page 2

Conrail reactivated and upgraded its Brilliant Branch connection between its Pittsburgh/Philadelphia mainline and its Strip District New Kensington line. Conrail was thereby able to continue to handle traffic to and from the Pittsburgh Strip District over the upper deck of the Ft. Wayne Bridge via the Pittsburgh/Philadelphia main line and the rebuilt Brilliant Branch connection to its Strip District-New Kensington line.

- c. The disputed permanent rail easement between 16<sup>th</sup> and 21<sup>st</sup> Street is the last 1541.56 feet of the former Conrail rail line right of way extending from 29<sup>th</sup> Street down Railroad Street to 16<sup>th</sup> Street and is not subject to the “spur or yard track” exception under §10906.

Confronted with the incontrovertible facts set forth above, Buncher’s fall back position is to argue, in the alternative, that the end of Conrail’s line on the north side of the Produce Terminal between 16<sup>th</sup> and 21<sup>st</sup> Street was actually not a “railroad line” but was excepted spur or yard track under Section 10906. However, AVRR’s evidence submitted in the initial STB proceeding, including Mr. Jim Streett’s description of Conrail operations in 1976-78 and his use of this line as a Conrail train master to deliver line haul interstate shipments of food stuffs to wholesale receivers located in the Pittsburgh Produce Terminal, establishes that the rail easement between 16<sup>th</sup> and 21<sup>st</sup> Street was the last 1541.56 feet of Conrail’s New Kensington-Strip District rail line serving the Pittsburgh Produce Terminal<sup>3</sup>. And as Buncher concedes, this line could also be used by other shippers who might locate on Buncher owned property in the future<sup>4</sup>. Furthermore, as explained by Mr. Williams in his Verified Statement, Conrail’s service commitments to the City of Pittsburgh in 1984 to use its rail facilities on the north side of the Pittsburgh Produce Terminal to serve current and future produce wholesalers is clear and

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<sup>3</sup> See Verified Statement of James Streett dated July 7, 2009, AVRR Reply to Buncher’s Motion for Leave to File Response, July 15, 2009.

convincing evidence that Conrail fully intended to preserve its permanent rail easement between 16<sup>th</sup> and 21<sup>st</sup> Street as part of its rail line to serve Strip District shippers at and in the vicinity of the Pittsburgh Produce Terminal.

Moreover, Conrail's 1983 conveyance of the underlying parcel to Buncher conclusively establishes that the permanent rail easement retained by Conrail was part of its common carrier railroad line serving the Pittsburgh Produce Terminal. In that conveyance, Conrail sold Tracks 6 and 7 which were side tracks coming off of the Valley Industrial Track (Track 8) to Buncher without obtaining ICC abandonment authority. However, Conrail retained a permanent rail easement under Track 8 in that same conveyance because Track 8 was part of its rail line to New Kensington which would have required ICC abandonment authorization before it could be sold to Buncher. Thus, Conrail and Buncher agreed in the 1983 conveyance that Conrail would retain a permanent rail easement for the last 1541.56 feet of this rail line in compliance with its railroad common carrier obligations<sup>5</sup> as later explained by the ICC in its State of Maine decision which confirmed that railroads can convey property comprising a regulated rail line without obtaining abandonment authorization so long as the railroad retains sufficient rights to use its railroad line and right of way for common carrier railroad purposes. Me. Dep't of Transp. – Acquis. & Op. Auth. – Me. Cent. R.R., 8 I.C.C.2d, 835 (1991); See also North Shore Railroad Company – Acquisition and Operation Exemption – PPL Susquehanna, LLC, F.D. 35377, April 25, 2011, Slip op. at p. 2. Thus, the 1983 deed to Buncher clearly indicates that Conrail continued (1) to hold itself out to provide common carrier rail service between 16<sup>th</sup> and 21<sup>st</sup> Street and (2) retained the ability to provide that service over the permanent easement consistent with the rail service commitments in its 1981 deed conveying the Pittsburgh Produce Terminal to the

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<sup>4</sup> See Verified Statement of Joseph M. Jackovic, June 2, 2009, P. 5.

<sup>5</sup> See Buncher Co. Reply to AVRR's Petition for Declaratory Order, June 2, 2009, Page 8, f.n. 9.

Pittsburgh URA and its statutory common carrier obligations. See Sou. Pac. T. Co. – Abandon. Exemption – Los Angeles County, 8 I.C.C.2d 495, 1992 W.L. 125050 (1992)

In attempting to argue that the permanent rail easement between 16<sup>th</sup> and 21<sup>st</sup> Street is subject to the §10906 exception, Buncher is also subject to the equitable doctrine of estoppel by deed which precludes it from representing to the Board that the permanent rail easement to which its property is subject is anything other than a “railroad line”. Estoppel by deed is a bar which precludes a party to a deed and his or her privies from asserting against the other party or that party’s privies any right or title in derogation of the deed or from denying the truth of any material fact contained in the deed. 31 C.J.S. Estoppel and Waiver §9. As previously noted, in the 1983 deed, Conrail and Buncher agreed that Conrail would retain a perpetual rail easement for present and future rail use of its Track 8 right of way between 16<sup>th</sup> and 21<sup>st</sup> Street while at the same time selling two adjacent rail sidings to Buncher without first obtaining ICC abandonment authorization. The disparate treatment of Track 8 from that accorded to Tracks 6 and 7 is a material factual distinction explicitly stated in the deed and establishes that the perpetual rail easement was and continues to be part of a regulated rail line. Thus, as a matter of equity, Buncher is estopped from asserting that Track 8 was not a “railroad line” in derogation of the covenants and material factual representations contained in its 1983 deed.

AVRR is entitled to assert this equitable principal because it is the successor in interest to Conrail’s easement rights and interests. The doctrine of equitable estoppel by deed applies not only to the parties to the deed but to the devisees, executors and other successors. Grossman v. Hill, 384 Pa. 590, 122 A 2d (1956). Moreover, the Board is free to apply equitable considerations to this dispute. There are numerous precedents affirming the use by federal agencies of equitable principles. United States v. Northern Pac. Ry., 288 U.S. 490, 494 (1933) (laches, emphasizing the importance of timeliness to orderly administrative procedure); National

Insulation Transp. Comm. v. ICC, 683 F 2d 533, 540-541(DC Cir. 1982) (ICC has broad equitable discretion to fashion rate refund remedies); Southern Ry. v. United States, 412 F. Supp. 1122, 1151 (D.D.C. 1976) (agency should look to equity of restitution in determining whether to award refund for unlawful rate); Moss v. CAB, 521 F 2d 298, 308-309(D.C Cir. 1975) (same), Del & Hudson Co. – Lease and Trackage Rights – Springfield Terminal Ry. Arbitration Review, F.D. 30965 (Sub No. 4), slip op. at 9 (Sep. 29, 1995), Pyco Industries – Feeder Line Application – Lines of South Plains Switching, LTD, F.D. 34890 (June 9, 2000) Thus it is entirely appropriate and within the Board’s discretion to apply the equitable doctrine of estoppel by deed in the context of this proceeding.

But even if the Board were, in its discretion, not to give estoppel effect to the terms of Buncher’s 1983 deed, it should, nonetheless, conclude that the terms of the 1983 deed provide clear evidence from which the Board may reasonably infer that Conrail and Buncher intended that Track 8 and the permanent rail easement between 16<sup>th</sup> and 21<sup>st</sup> Street would remain part of Conrail’s railroad line extending from 29<sup>th</sup> Street down Railroad Street to 16<sup>th</sup> Street for service to the Pittsburgh Produce Terminal and future Strip District businesses to be located on Buncher owned property. The object of the construction of any deed is to give effect to the intent of the parties as expressed in the clear and unambiguous language of the deed. In re: Hipple, 418 B.R. 130 (Bkr. M.D. Pa. 2009); In re: Yasipour, 238 B.R. 289 (Bkr M.D. Pa. 1999); Maxwell v. Saylor, 359 Pa 94, 58 A2d 355 (1948). As such, the last 1541.56 feet of Conrail’s rail line between 16<sup>th</sup> and 21<sup>st</sup> Street is not excepted track.

- d. Mr. Gerhard Williams, Jr.’s Verified Statement conclusively establishes that Conrail did not exercise the abandonment authorization granted by the ICC in AB 167 (Sub No. 558N) for the Smallman Street track from 11<sup>th</sup>



Street to 21<sup>st</sup> Street because of Mr. Stanley Crane's commitment to  
Pittsburgh Mayor Richard Caliguiri.

The evidence presented by the parties in this proceeding not only establishes that Conrail's permanent rail easement between 21<sup>st</sup> and 16<sup>th</sup> Street was the western terminus of its rail line right of way utilized to serve the Pittsburgh Produce Terminal, it also establishes that the rail line on the north side of the Produce Terminal was not the Smallman Street line for which abandonment authorization was sought by Conrail in AB167 (Sub No. 558N) and which it later obtained in AB167 (Sub Nos. 571N, 572N and 641N). All four abandonment dockets pertain only to Conrail's Smallman Street track south of the Produce Terminal<sup>6</sup>.

Under 45 U.S.C. §748 (d)(3)(B) if Conrail received no bona fide offer for the sale of a rail line sought to be abandoned under NERSA, then Conrail was authorized to "abandon or dispose of the line as it chooses..." (Emphasis added). Conrail Abandonment Under NERSA, 365 I.C.C. 472, 1981 WL 22704 (I.C.C.) slip op p. 8. In fact, a railroad may resume operations on a line that has been authorized for abandonment and thereby retain that line in common carrier service without further approval from the ICC. Abandonment and Discontinuance of Rail Line, Ex Parte 537, 1996 WL 112617 (1996). This is because an ICC abandonment certificate is not a compulsory order but rather permissive authority that the railroad may or may not decide to exercise. State of Maine Acq. Of Certain Lines in Maine - Springfield Terminal Railway

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<sup>6</sup>Notwithstanding Conrail's use of physical rail structures, milepost markers and street names to identify its rail line in its AB 167 (Sub No. 558N) abandonment application, Buncher contends that Conrail intended to include its rail line on the north side of the Produce Terminal between 16<sup>th</sup> and 21<sup>st</sup> Street (comprised of Track 8 and the permanent rail easement) because Conrail used the name Valley Industrial Track on its abandonment application. However, Buncher's contention creates ambiguity in Conrail's abandonment application where none exists. But even if Conrail intended to include Track 8 and its permanent rail easement in its AB167-(Sub No. 558N) abandonment application, Mr. Williams' testimony establishes that Conrail did not exercise the abandonment authority granted in that docket and continued to use its rail line on the north side of the Produce Terminal until Track 8 was eventually removed by Buncher "without Conrail objection" (Jackovic V.S. June 23, 2009, p. 1). And even then Conrail continued to hold itself out in its tariffs to provide rail service to the Pittsburgh Produce Terminal, honoring its common carrier service obligations to those shippers and its contractual commitments to the City of Pittsburgh.

Company – Discontinuance of Service Exemption – Cumberland and Oxford Counties, ME, STB F.D. 35140, 2008 WL 4264521 (Sept. 16, 2008); Honey Creek Railroad, Inc. – Aband. Exemption – In Henry County, IN, STB F.D. 34869, 2008 WL 2271465 (June 2, 2008)<sup>7</sup>.

Buncher’s additional evidence reveals that when the City of Pittsburgh objected to the proposed abandonment of the Smallman Street track from 11<sup>th</sup> to 21<sup>st</sup> Street due to its impact on Conrail’s service to the Pittsburgh Produce Terminal, Conrail’s President, Stanley Crane, personally committed to Pittsburgh Mayor Richard Caligieri that Conrail would defer its Smallman Street abandonment and, at Mr. Crane’s direction, Mr. Williams negotiated alternative rail service arrangements for the Pittsburgh Produce Terminal using Conrail’s rail facilities on the north side of the Produce Terminal in return for the City’s agreement that Conrail could abandon its Smallman Street track from 11<sup>th</sup> to 29<sup>th</sup> Street for which ICC authorization was subsequently obtained in AB167 (Sub Nos. 571N, 572N, and 641N). Mr. Williams was personally involved in the administration and management of Conrail’s Strip District abandonment proceedings and in the negotiations with the City of Pittsburgh. As an objective and disinterested third party to the present dispute between AVRR and Buncher and having volunteered to present evidence in this case, the Board should accord substantial weight to his testimony. C&H Transportation Co., Inc. – Investigation and Revocation of Certificate, 122 I.C.C. 441 (No. MC-C-8749) January 1, 2006 at Page 27; Elk Corporation of Texas – Petition for Declaratory Order – Certain Rates and Practices of Saber Transport, Fed. Carr. Cas. P 37227 (No. 40825) July 31, 1995 at Page 8 (Great weight given to testimony of witness with personal knowledge who was specifically authorized to negotiate and reach agreements to which his testimony related.) Thus, contrary to Buncher’s contentions, all four abandonment notices

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<sup>7</sup> Buncher’s new evidence also explains why Conrail did not consummate the ICC’s abandonment order with a written notice in AB167 (Sub No. 558N). Conrail, upon obtaining ICC abandonment authority, did not exercise that

pertain only to the Smallman Street track between 11<sup>th</sup> and 29<sup>th</sup> Street and are fully explained by Mr. Williams' testimony regarding the Pittsburgh Produce Terminal alternative service arrangements which he negotiated on behalf of Conrail with the City of Pittsburgh.

- e. Buncher's evidentiary claims betray a lack of knowledge regarding railroad practices, operations and transactions and have no merit.

Buncher's assertion regarding the purported efficacy of its additional evidence demonstrates why Congress delegated railroad regulatory issues to an expert administrative agency. Buncher's lack of knowledge with respect to railroad operations and practices are demonstrated repeatedly throughout its pleading. For instance, Buncher asserts that the Valley Industrial Track can only refer to a single track. As the Board is well aware, railroads routinely use names such as the Valley Industrial Track to refer to rail facilities within a particular location or service corridor which can encompass multiple rail lines in close proximity to each other. Line designations are published in railroad time tables, track charts and valuation maps and change over time as rail operations and trackage expand or contract with the growth or loss of traffic. See City of Lincoln v. STB, 414 F.3d 858, 862 (8<sup>th</sup> Cir. 2005), Midland Valley Railroad v. Jarvis, 29 F.2d 539, 541 (8<sup>th</sup> Cir. 1928).

Buncher's additional evidence proves that in 1983 Conrail referred to its Strip District rail facilities as the Valley Industrial Track or the Valley Industrial Cluster indicating the multiple lines comprising its Strip District rail facilities. The documents attached to Buncher's additional evidence, as explained by Mr. Williams, reveal that Conrail examined a number of different alternative track abandonment options for its rail lines in the Pittsburgh Strip District in 1983 and 1984. Moreover, the evidence in this case establishes that the 1984 track configuration in the Strip District extended from the lower deck of the Ft. Wayne Bridge along Smallman Street

south of the Pittsburgh Produce Terminal to 29<sup>th</sup> Street where it crossed the block from Smallman Street to Railroad Street to connect with the track in Railroad Street extending up the Allegheny River to New Kensington and beyond. At 29<sup>th</sup> Street, the track in Railroad Street also extended from 29<sup>th</sup> Street to 16<sup>th</sup> Street on the north side of the Pittsburgh Produce Terminal. Notwithstanding Buncher's mischaracterization of AVRR's "two track theory" and its efforts to denigrate Mr. Peterson's testimony, the Smallman Street line (11<sup>th</sup> to 29<sup>th</sup> Street) and the Railroad Street line (29<sup>th</sup> to 16<sup>th</sup> Street) comprise the two rail lines used by Conrail to serve the Pittsburgh Strip District and the Pittsburgh Produce Terminal in 1983 and 1984.

Buncher's ignorance of the changing character of the Pittsburgh Strip District rail operations is also betrayed by its repeated reference to Conrail's rail facilities in the Strip District as "spaghetti". The Board is well aware that rail facilities are carefully engineered, constructed, altered or removed based on the demands of safety, operational necessity, track capacity and return on investment. While the configuration of rail facilities in the Pittsburgh Strip District at one time involved a complex system of track components engineered to operate as freight marshalling yards adjacent to main line tracks, those facilities were anything but "spaghetti". In fact, this misleading metaphor is used by Buncher primarily to obfuscate Mr. Peterson's testimony regarding the distinction retained by Conrail over the years with respect to yard tracks and its rail line extending through those yards facilities north of the Pittsburgh Produce Terminal.

Similarly, Buncher contends that the Board should not have considered Conrail's 1995 deed as indicative of Conrail's intent to convey to AVRR an active rail line including the permanent rail easement because Conrail quit claimed its property interests to AVRR. However, notwithstanding Buncher's gratuitous citation of preempted Pennsylvania property law, the Board is well aware of the nearly universal practice in the railroad industry of conveying railroad rights of way by quit claim deed because of the extensive number of and the varied quality of

title to parcels comprising a railroad right of way. Given these facts and the Board's extensive regulatory experience dealing with railroad right of way documents and conveyances, the text of Conrail's 1983 and 1995 deeds are the best evidence of Conrail's intent to retain and then sell to AVRR the Track 8 right of way from 21<sup>st</sup> Street to 16<sup>th</sup> Street as a part of a common carrier rail line. Wysinski v. Mazzotta, 472 A2d 688 (Pa. Super. 1984). (Where the language of the deed is clear, intent of the parties is determined from the language of the deed).

Finally, Buncher has again ignored the details in its own evidence which inform and provide important factual context for the four ICC abandonment proceedings in Dockets AB167, (Sub Nos. 558N, 571N, 572N, and 641N). The Conrail abandonment documents presented by Buncher all pertain to Conrail's efforts to restructure its rail service in the Pittsburgh Strip District to accommodate important interstate highway construction on the north end of the Ft. Wayne Bridge. This, in turn, required abandonment of the lower bridge deck and the Smallman Street track at the south end of the bridge from 11<sup>th</sup> to 21<sup>st</sup> Street which caused Pittsburgh Mayor Caliguiri to intervene with Conrail President Stanley Crane and obtain from Mr. Crane a commitment on the part of Conrail not to exercise any abandonment authority obtained from the ICC until Conrail and the City negotiated a rail service commitment for the Pittsburgh Produce Terminal using Conrail tracks on the north side of the Produce Terminal. These details are contained in the internal Conrail documents which accompany the Conrail abandonment filings in AB167 (Sub Nos. 571N, 572N, and 641N). AVRR has been able to corroborate those details by Mr. Williams' testimony based on his personal knowledge of and participation in those events. Thus, Buncher's own evidence of the four Conrail abandonment proceedings establish AVRR's right to use the permanent rail easement from 16<sup>th</sup> to 21<sup>st</sup> Street for common carrier rail service and confirm the Board's previous decision in this case.

- f. The Harsimus decision has no application to this proceeding because this proceeding involves a dispute over an easement retained by Conrail in 1983 and Conrail's operation, use and abandonment of its Strip District rail facilities in 1984, not the status of properties acquired by Conrail in 1976 under the Final System Plan.

“Congress passed the Regional Rail Reorganization Act (“3 R Act”) in response to the bankruptcy of eight major railroads, which threatened the viability of the United States rail transportation system. The 3 R Act reorganized the railroads into a single, viable system operated by a private, for-profit corporation, which would not have been possible under Section 77 of the Bankruptcy Act.” New York v. National Railroad Passenger Corp., United States District Court, Docket No. 06 CV 793 (E.D.N.Y. 2008), *aff’d*, United States Court of Appeals, Docket No., 09 1200 CV (2<sup>nd</sup> Cir. April 21, 2010). The 3 R Act provides that “[a]ll rail properties conveyed to the Corporation... shall be conveyed free and clear of any liens or encumbrances, but subject to such leases and agreements as shall have previously burdened such properties... Such conveyances shall not be restrained or enjoined by any court.” 45 U.S.C. §743(b)(2). The 3 R Act established a “Special Court” with the “power to order the conveyance of rail properties of railroads leased, operated, or controlled by a railroad in reorganization in the region.” 45 U.S.C. §719(b). The Special Court had exclusive and original jurisdiction to “interpret, alter, amend, modify or implement any of the orders entered by such court pursuant to Section 743(b) of this title in order to effect the purposes of this chapter or the goals of the Final Systems Plan.... Any orders pursuant to this paragraph which interpret, alter, amend, modify, or implement orders entered by the Special Court shall be final and shall not be restrained or enjoined by any court.” 45 U.S.C. §719(e)(2). The Special Court consistently held that the interpretation of conveyance documents “so as to give effect to the intention formulated by [the

United States Railway Association] and approved by Congress is within “the central functions” of [the Special Court]...”. Consolidated Rail Corp. v. Pittsburgh and Lake Erie Railroad Co., 459 F. Sup. 1013, 1017-18 (Reg’l Rail Reorg. Ct. 1978); Consolidated Rail Corp. v. Surface Transportation Board, *supra*, at 571 F3d 18n. 11; see also Penn Central Corp. v U.S., 862 F. Sup. 437, 467 (Reg’l Rail Reorg. Ct. 1994) (Special Court is final arbiter of correct interpretation of conveyance documents, 3 R Act and Final System Plan (“FSP”)). In 1997, Congress transferred the Special Court’s exclusive jurisdiction over these issues to the United States District Court for the District of Columbia. Niagara Mohawk Power Corp. v. Consolidated Rail Corp., 97 F. Sup. 2d 454, 456 (S.D.N.Y. 2000).

Not every challenge relating to the FSP or its conveyance orders fall within the jurisdiction of the Special Court.

It is not every challenge relating to the [3 R Act] that Congress brought within [the Special Court’s] exclusive province but only those where the critical nature of the determination demands the consistent interpretation possible only when review is concentrated in a single court. (Emphasis added). Congress carefully considered the ambit of the Special Court’s exclusive jurisdiction. Congressional concern focused on providing for exclusive jurisdiction where the Special Court’s central functions under the 3 R Act were concerned, while narrowing the exclusive jurisdiction to oust problems which could be effectively dealt with by other courts. Consolidated Rail Corp. v. Illinois, 423 F. Sup. 941, 948 (Reg’l Rail Reorg. Ct. 1977). (Emphasis Added)

Thus the Special Court only has “exclusive jurisdiction where resolution of the dispute involves the court’s central functions...”. (Internal quotation marks omitted.) Consolidated Rail Corp. v. Surface Transportation Board, 571 F.3d 13, 18 n. 11 (C.A.D.C 2009).

Moreover, the Special Court also recognized that it did not have jurisdiction to hear every case interpreting conveyance documents. Penn Central Corp. v. U.S., 814 F. Sup. 1116, 1119-20 (Reg’l Rail Reorg. Ct. 1993); Consolidated Rail Corp. v. Penn Central Corp., 533 F. Sup. 1351 1353-54 (Reg’l Rail Reorg. Ct. 1982); Consolidated Rail Corp. v. Pittsburgh and Lake Erie Railroad Co., *supra*, at 1017. Rather, the Special Court “can and should exercise jurisdiction

under [§719(e)(2)] over disputes that require it to interpret conveyance documents in light of an earlier conveyance order” where Penn Central alleged that the “as is” provision in the conveyance order precluded liability under CERCLA. Penn Central Corp. v. U.S., *supra*, at 1120. See, e.g. Consolidated Rail Corp. v. Penn Central Corp., *supra*, at 1354 (Special Court has exclusive jurisdiction to interpret the rights acquired by Conrail in the extension of a railroad equipment lease entered into pursuant to the special court conveyance order.) Consolidated Rail Corp. v. Pittsburgh & Lake Erie Railroad Co., *supra*, at 1017 (interpretation of the nature and privileges conveyed to P&LE under a trackage rights agreement directed by conveyance order was within Special Court’s exclusive jurisdiction because it raised substantial questions with respect to interpretation and implementation of FSP and conveyance orders.) In short, where the resolution of a dispute involves its central functions, the Special Court, now the D.C. District Court, has original and exclusive jurisdiction to interpret orders entered by it pursuant to §743(b).

A dispute over the interpretation of conveyance documents is within the central functions of the Court if it requires the Court to interpret those documents in light of an earlier conveyance order or the FSP. The Special Court also narrowly construed its jurisdiction to instances where the interpretation of the conveyance documents raise substantial questions with respect to the interpretation of the conveyance orders or the FSP. Indeed, the Court has resisted a broad application of its jurisdiction that would give the district court “exclusive jurisdiction to determine every controversy that may arise over the interpretation of the thousands of instruments executed pursuant to its conveyance orders,” Consolidated Rail Corporation v. U.S., 883 F. Sup. 1565, 1573 (Reg’l Rail Reorg. Ct. 1995), which would run counter to Congress’ intent to narrow the court’s exclusive jurisdiction to problems that cannot be dealt with effectively by other courts or administrative agencies. Thus, the determination of whether the Board or the D.C. District Court has jurisdiction over the status or nature of the permanent rail



easement hinges on whether this case raises a substantial question requiring an interpretation of the FSP or conveyance orders under which Conrail acquired its Strip District rail facilities.

In light of the foregoing cases, if there were a dispute between Conrail and Buncher as to whether all the property between 16<sup>th</sup> and 21<sup>st</sup> Street under Track 8 was conveyed to Conrail in 1976, that issue would be within the D.C. Circuit Court's jurisdiction because it would require an interpretation of the FSP and the Court's conveyance order. Similarly, if the dispute in this proceeding involved the nature and characterization of Track 8 and the right of way between 16<sup>th</sup> and 21<sup>st</sup> Street acquired by Conrail in 1976 under the FSP, that issue would require an interpretation of the FSP, and the D.C. District Court would have exclusive jurisdiction. However, those are not the disputed issues in this proceeding.

The factual distinctions between Harsimus and this proceeding have already been briefed to the Board by AVRR in its response to the Board's order of September 17, 2009 and AVRR incorporates by reference its prior brief in its entirety in this pleading. Simply put, the FSP line code reference numbers contained in the 1983 deed do not present substantial questions requiring an interpretation of the FSP or the Special Court's conveyance orders such that the D.C. District Court must perform its central functions of implementing or enforcing the uniform application of the FSP. Cf. Norfolk Southern Railway Company – Petition for Exemption – In Baltimore City and Baltimore County, MD, AB 290 (Sub No. 311X), May 4, 2011. Slip op. at p. 5 (nature of track transferred in 1976 FSP not at issue, therefore no interpretation of FSP necessary) In this case, Buncher is attempting to stretch the D.C. District Court's FSP jurisdiction far beyond those central functions, especially where this dispute involves facts, rail operations, conveyances and regulatory proceedings which all post date the 1976 Final System Plan and property conveyances orders by at least seven years.

A close examination of the 1983 Conrail deed to Buncher and the 1984 NERSA abandonment application in AB167 (Sub No. 558N), Exhibit B: Location and Map confirms that AVRR's so called "two line theory" requires no interpretation of the FSP. The parcel conveyed by Conrail to Buncher in 1983 on the north side of the Pittsburgh Produce Terminal is referred to on Page 285 of the recorded deed "as the Allegheny Branch and identified at Line Code 2229 in the records of the [USRA]." Reserved from that parcel on Page 287 of the deed was a permanent rail easement over Conrail's "so called Valley Industrial Track which traverses the land hereinbefore described". Since this dispute does not involve a question regarding Conrail's title to the parcel "herein before described" between 16<sup>th</sup> and 21<sup>st</sup> Street or the status or nature of the Allegheny Branch in 1976, there is no need to interpret the FSP or the conveyance orders for the Allegheny Branch, a designation no longer used by Conrail for its Strip District rail facilities in 1983<sup>8</sup>. Moreover, the reservation of the permanent rail easement for the "Valley Industrial Track" on Page 287 of the 1983 deed makes no reference to the Final System Plan or a Line Code or a special court conveyance order. Accordingly, from this 1983 deed language it is evident that in 1983 Conrail referred to Track 8 between 16<sup>th</sup> and 21<sup>st</sup> Street as part of its Valley Industrial Track which has no nexus to the FSP.

Moreover, when Exhibit B of the AB 167 (Sub No. 558N) application is examined, it describes the Valley Industrial Track as "(formerly Allegheny Sec.)" from "JCT with Ft. Wayne Conn. Track (approx. M.P. 0.0) to N. Side of 21<sup>st</sup> St. (approx. M.P. 0.66)." There is no FSP reference in the application. Since only the Smallman Street line connected to the lower deck of the Ft. Wayne Bridge in 1984, that line was the only part of the Valley Industrial Track for which abandonment authorization was sought in AB167 (Sub No. 558N). The 1983 deed and the 1984

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<sup>8</sup> Buncher concedes that Conrail changed its use of track names in the Strip District between 1977 to 1983 referring to Conrail track maintenance charts. Joseph M. Jackovic Verified Statement June 23, 2009, Pgs. 2-3

NERSA abandonment application, and the evidence produced in this remanded proceeding establish that in 1983 and 1984 Conrail referred to its rail line north of the Produce Terminal and its rail line in Smallman Street from 11<sup>th</sup> Street to 29<sup>th</sup> Street south of the Produce Terminal as the “Valley Industrial Track” or “Cluster”. Thus, the language of the 1983 deed and the 1984 abandonment application can be construed and interpreted by the Board to resolve the dispute between AVRR and Buncher without any reference to the 1976 FSP, Conrail conveyance orders or the 3 R Act.

The reference to the FSP line code designation in Conrail’s 1983 deed to Buncher is merely a standard reference to the prior recorded conveyance into Conrail in 1976 as part of Conrail’s chain of title<sup>9</sup>. A line code number is a standard deed reference in every post 1976 conveyance of Conrail property from Conrail to a grantee.<sup>10</sup> Similarly, the use of the name “Valley Industrial Track” in AB167 (Sub No. 558N) is not a reference to a line designation in the FSP or a conveyance order, it is a reference to the name used by Conrail in its 1984 time tables and track charts to identify its 1984 rail facilities in the Pittsburgh Strip District<sup>11</sup>. Indeed there is no reference to the FSP or conveyance orders in Conrail’s 1984 abandonment documents and there is no reference to the Valley Industrial Track in the FSP. Thus, this dispute does not involve any substantial questions requiring an interpretation of the FSP or a 1976 conveyance order to effectuate uniform application and implementation of the FSP.

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<sup>9</sup> AVRR and Buncher do not dispute that Conrail acquired the property conveyed to Buncher in 1983 pursuant to the FSP.

<sup>10</sup> See Conrail’s 1995 deed to AVRR, D.B. Vol. 09371, pages 213-221. AVRR Exhibit B-1. The line code designation issue asserted by Buncher would require the Court to assume jurisdiction over every disputed conveyance of property by Conrail or its successors simply because the deeds contain an FSP line code reference number. This broad application of D.C. District Court jurisdiction to potentially thousands of Conrail deeds is precisely the kind of unlimited jurisdiction the Court has refused to incur.

<sup>11</sup> See Jackovic V.S. June 23, 2009, Pgs. 2-3

Buncher's insistence that the D.C. District Court has jurisdiction over this dispute is a "boot strap" argument of its own making born of its mistakes in this proceeding. First, Buncher claimed that the permanent rail easement between 16<sup>th</sup> and 21<sup>st</sup> Street was abandoned by Conrail in AB167 (Sub No. 558N) because the 1983 deed and the abandonment notice referred to the Valley Industrial Track. However, Buncher's superficial reading of the abandonment application failed to discern that the track description in the application started at M.P. 0.0 at the junction of the Ft. Wayne (Bridge) Connecting Track and the track at 11<sup>th</sup> Street extending to 21<sup>st</sup> Street. In 1984, there was no track connecting the lower deck of the Ft. Wayne Bridge to Track 8 at 16<sup>th</sup> Street, a fact which Buncher failed to consider. Buncher then argued that the Track 8 permanent rail easement was excepted track for which no abandonment authorization was necessary. To bolster this assertion, Buncher illogically contends that since the 1983 deed referenced a Final System Plan line code and track name, it is necessary to interpret the 1976 Final System Plan and/or conveyance orders to determine the status or nature of the permanent rail easement reserved by Conrail in 1983 and for purposes of the 1984 abandonment proceeding.

However, in 1983, Conrail was restructuring its Pittsburgh Strip District rail lines in anticipation of its abandonment of the lower deck of the Ft. Wayne Bridge and the lower deck approaches on either end of the bridge. Prior to 1983, traffic to and from the Pittsburgh Strip District used the Ft. Wayne Bridge lower deck and the Smallman Street track to reach the Pittsburgh Strip District and the Pittsburgh Produce Terminal, but after 1984 that traffic was rerouted over the upper deck of the Ft. Wayne Bridge and proceeded via the Philadelphia-Pittsburgh main line and the Brilliant Branch connection to the Strip District-New Kensington line to 16<sup>th</sup> Street to serve the north side of the Pittsburgh Produce Terminal. This restructuring encompassed Conrail's reservation of the permanent rail easement over the parcel it conveyed to Buncher in 1983. The 1983-84 reconfiguration of Conrail's Strip District rail facilities and

service on those lines substantially altered the nature and status of its Strip District rail facilities, irrespective of the nature of tracks acquired by Conrail in 1976 under the FSP. As a result of these changes, the New Kensington-Strip District line to 16<sup>th</sup> Street became Conrail's primary rail line serving the Strip District and the Pittsburgh Produce Terminal incident to the abandonment of its Smallman Street line from 11<sup>th</sup> Street to 29<sup>th</sup> Street. Even if the Board were to direct the parties to refer to the D.C. District Court the issue of the status or nature of Track 8 under the FSP, the reconfiguration of Conrail's Strip District rail facilities and operations in 1983 and 1984 would render any interpretation of the FSP or its conveyance documents by the Court irrelevant for purposes of resolving the status and nature of Conrail's permanent rail easement after 1983. See Detroit/Wayne County Port Authority v. ICC, 59 F3d 1314 (D.C. Cir. 1995) (recognizing that it is not unusual that, as railroad traffic changes and grows, railroad facilities may need to be altered.)

Given the alterations to Conrail's restructured Strip District rail facilities, Buncher's arguments invoking the D.C. District Court's jurisdiction do not raise substantial questions related to the implementation or enforcement of the FSP or its conveyance orders in a uniform and consistent fashion. Conrail's Strip District rail facilities in 1983-1984 were simply not the same rail facilities conveyed to Conrail in 1976 and this proceeding therefore presents issues that are beyond the scope of the Court's FSP "central functions" jurisdiction.

II. In the absence of a definitive decision from a Pennsylvania court that the disputed permanent rail easement was terminated or lapsed before 1995, AVRR's acquisition of Conrail's easement under Conrail's 1995 recorded quit claim deed in Finance Docket 32783 continues to subject the rail easement to a common carrier obligation and provides no legal basis for revocation of AVRR's certificate of public convenience and necessity to provide common carrier rail service using the easement pursuant to 49 U.S.C. §10901.

Notwithstanding the status of Conrail's 16<sup>th</sup> to 21<sup>st</sup> Street rail easement as a railroad line or excepted track or whether or not the easement was abandoned in 1984 in AB167 (Sub No. 558N), Buncher is confronted in this proceeding with an insurmountable obstacle. The fact remains that AVRR was authorized to acquire Conrail's permanent rail easement for common carrier rail use under Conrail's 1995 quit claim deed in an ICC exempted §10901 acquisition proceeding. Section 10901 acquisition authority is permissive, not mandatory, and is not dispositive of ownership of a line<sup>12</sup>. However, Buncher did not object to AVRR's acquisition proceeding and did not challenge AVRR's acquisition of Conrail's permanent rail easement in 1995 or thereafter. In its Notice of Exemption filed with the Board, AVRR clearly identified the rail line it acquired from Conrail as commencing at M.P. 0.0 at 16<sup>th</sup> Street<sup>13</sup> and its entire rail line is therefore subject to federal regulatory jurisdiction under 49 U.S.C. §10901. Effingham  
Effingham Railroad Company – Petition for Declaratory Order – Construction at Effingham, IL, STB Docket No. 41986, September 8, 1997. Thus, in 1995 Conrail's permanent rail easement was acquired for common carrier railroad use and thereafter is subject to STB jurisdiction notwithstanding its regulated or excepted status prior to that time.

To prevent AVRR's proposed use of its rail easement, Buncher must first obtain revocation of AVRR's acquisition and operating authority for the easement between 16<sup>th</sup> and 21<sup>st</sup> Street in F.D. 32783. The party seeking revocation has the burden of proof and petitions to revoke must be based on reasonable, specific concerns. I&M Rail Link, LLC – Acquisition and Operation Exemption – Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City

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<sup>12</sup> General Railway Corporation, D/B/A Iowa Northwestern Railroad – Exemption for Acquisition of Railroad Line – In Osceola and Dickinson Counties, IA, STB Finance Docket No. 34867, June 13, 2007.

<sup>13</sup> See Exhibit J, Buncher Co. Reply to AVRR's Petition for Declaratory Order, June 2, 2009.

of Ottumwa v. STB, 153 F.3d 879 (8<sup>th</sup> Cir. 1998) Rep. Buncher has not begun to satisfy these standards.

Buncher erroneously asserts that it is AVRR's burden to prove the existence of a valid continuing easement. To the contrary, it is Buncher's burden to provide a Pennsylvania court decision examining AVRR's easement and ruling that it has lapsed or was relinquished prior to 1995. In Black Hills Transportation, Inc. D/B/A Deadwood Black Hills and Western RR – Modified Rail Certificate, F.D. 34924, 2010 WL 302027 (Jan. 26, 2010) the Board found that in a similar dispute where adjacent land owners had obtained a state court decision ruling that a railroad right of way had reverted prior to the rail carrier obtaining a modified rail certificate, the railroad's failure to acquire title to its right of way warranted the Board's grant of a petition to revoke the railroad's modified certificate. In this proceeding, however, unlike the Black Hills case, Buncher has not obtained a state court decision ruling that AVRR's easement reverted or lapsed prior to 1995. Moreover, AVRR has placed in evidence the 1983 deed in which Conrail reserved a permanent rail easement and the 1995 deed conveying that easement from Conrail to AVRR under authority granted by the ICC in FD 32783. These documents are prima facie evidence of AVRR's legal title to the easement.

As the Board is aware, it is common for railroads to hold various property interests in the land that constitutes their rights of way. Buncher has offered no evidence showing that AVRR lacks the title it needs to perform all of the common carrier rail transportation functions contemplated for that easement. Cf. Norfolk Southern Railroad Co. and Ala. Great Southern RR Co. – Petition for Declaratory Order, STB FD 35196 (Feb. 26, 2010). Despite Buncher's 27 year ownership of the underlying parcel and its significant Strip District development interests, Buncher has sat on its hands and not asserted any legal objection to the continued existence of the rail easement until AVRR commenced this declaratory order proceeding.

Nor can Buncher now initiate a state court proceeding to challenge AVRR's title to the permanent rail easement. Under §10501(b), as broadened by ICCTA, the jurisdiction of the Board over transportation by rail carriers and associated property and the remedies provided under 49 U.S.C. §§ 10101-11909 are exclusive and preempt the remedies provided under federal or state law. See City of Auburn v. STB, 154 F.3d 1025, 1029-31 (9<sup>th</sup> Cir. 1998). This preemption is broad enough to preclude all state and local regulation that would prevent or unreasonably interfere with railroad operations. See CSX Transp., Inc. v. Georgia Pub. Serv. Comm'n, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996); City of Auburn, 154 F.3d at 1030; Green Mountain RR Corp. v. Vermont, 404 F.3d 638 (2d Cir. 2005); Friberg v. Kansas City S. Ry., 267 F.3d 439 (5<sup>th</sup> Cir. 2001); CSX Transportation, Inc. – Petition for Declaratory Order, STB Finance Docket No. 34662 (STB served Mar. 14, 2005), reh'g denied (STB served May 3, 2005); Pet. For Declaratory Order – Boston & Marine Corp. and Town of Ayer, MA, 5 S.T.B. 500 (2001), aff'd sub nom., Boston & Me. Corp. v. Town of Ayer, 206 F. Supp. 2d 128 (D. Mass. 2002), rev'd on other grounds, 330 F.3d 12 (1<sup>st</sup> Cir. 2003). At this late date, any state court challenge by Buncher to deprive AVRR of its permanent rail easement would impermissibly intrude on the STB's exclusive regulatory jurisdiction over common carrier rail line acquisitions and operations. Such state law claims initiated by Buncher would effectively seek to regulate rail transportation and interfere with AVRR's future use of its railroad line and are preempted under 49 U.S.C. §10501(b). Mark Lang – Petition for Declaratory Order, F.D. 35037, Jan. 24, 2008.

In the absence of a Pennsylvania state court decision ruling that AVRR's permanent rail easement has terminated or lapsed prior to 1995 under Pennsylvania law, there are no grounds to revoke AVRR's acquisition and operating authority between 21<sup>st</sup> and 16<sup>th</sup> Street and Buncher is precluded from interfering with AVRR's use of its permanent rail easement for common carrier railroad use under STB authority granted to AVRR in Finance Docket 32783.



## CONCLUSION

Ironical though it may be, the evidence from all four ICC abandonment proceedings offered by Buncher in this proceeding disproves each of Buncher's legal assertions in this case. First, the Conrail abandonment application in AB167 (Sub No. 558N) specifically describes the track sought to be abandoned as that which connected to the lower deck of the Ft. Wayne Bridge at 11<sup>th</sup> Street to 21<sup>st</sup> Street. In 1984, there was only one railroad line in existence to which this description applied: the Smallman Street track along the south side of the Pittsburgh Produce Terminal. The need to abandon this track was caused by the removal of the lower deck approach at the north end of the Ft. Wayne Bridge to afford necessary vertical clearance for the construction of Interstate 279 under that approach structure. Confronted with these facts, Buncher only contends that Conrail's abandonment application didn't mean what it says.

Buncher's additional evidence also reveals that when the City of Pittsburgh objected to the abandonment of the Smallman Street track from 11<sup>th</sup> to 21<sup>st</sup> Street due to its impact on Conrail's service to the Pittsburgh Produce Terminal, Conrail's President, Stanley Crane, pledged to Pittsburgh Mayor Richard Caliguiri not to proceed with its Strip District abandonments and, at Mr. Crane's direction, Mr. Williams negotiated alternative rail service arrangements for the Pittsburgh Produce Terminal using Conrail's rail facilities on the north side of the Produce Terminal in return for the City's agreement that Conrail could abandon its Smallman Street track from 11<sup>th</sup> to 29<sup>th</sup> Street which subsequently occurred in AB167 (Sub Nos. 571N, 572N, and 641N). In light of these facts, Buncher's arguments regarding Conrail's abandonment of the permanent rail easement or the excepted status of the track between 16<sup>th</sup> and 21<sup>st</sup> Street collapse under their own erroneous assumptions.


Finally, despite Buncher's efforts to shoehorn this case into the Harsimus ruling, its own evidence concerning the four 1984 Conrail abandonment proceedings when considered in the

context of the 1981 sale of the Pittsburgh Produce Terminal to the Pittsburgh Urban Redevelopment Authority and Conrail's 1983 conveyance to Buncher reserving a perpetual rail easement, clearly establish that this dispute arises out of Conrail's restructuring of its Strip District rail facilities and service in 1983 and 1984 long after the 1976 FSP conveyances. The Board can therefore resolve this dispute by applying rail regulatory law to the post 1976 evidentiary record in this proceeding and without any reference to or interpretation of the nature or status of rail facilities acquired by Conrail under the FSP. Indeed, counsel for Buncher conceded that evidentiary issue before the Board in oral argument on January 26, 2010 when he acknowledged that the Board could resolve this dispute "without actually relying on the Final System Plan evidence". Transcript of Oral Argument, January 26, 2010 at Pgs. 34-35. See Hanson v. Waller, 888 F. 2d 806 (11<sup>th</sup> Cir. 1989); Totten v. Merkle, (37 F. 3d 1172) (9<sup>th</sup> Cir. 1998) Buncher's additional evidence now confirms its counsel's admission to the Board.

Therefore, in light of the additional evidence presented by Buncher and the additional testimony presented by AVRR, AVRR respectfully requests that the Board confirm its June 15, 2010 decision and AVRR's right to use its perpetual rail easement from 16<sup>th</sup> to 21<sup>st</sup> Street in the Pittsburgh Strip District for common carrier railroad purposes.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By:   
Richard R. Wilson, Esq.  
Attorney for Allegheny Valley Railroad Company

## CERTIFICATE OF SERVICE

I hereby certify that I have this 10<sup>th</sup> day of May, 2011 served a copy of Allegheny Valley Railroad Company's Statement of Facts and Arguments – Remanded Proceeding upon the following by first class United States Mail, postage prepaid:

Office of Mayor Luke Ravenstahl  
City of Pittsburgh  
City County Building, Fifth Floor  
414 Grant Street  
Pittsburgh, PA 15219

George Spector, City Solicitor  
Law Department  
313 City County Bldg.  
414 Grant Street  
Pittsburgh, PA

Rob Stephany, Executive Director  
The Urban Redevelopment Authority of  
Pittsburgh  
200 Ross Street  
Pittsburgh, PA 15219-2016

Sharon O'Neill, Asst. General Counsel  
The Urban Redevelopment Authority of  
Pittsburgh  
200 Ross Street  
Pittsburgh, PA 15219-2016

Mr. Dan Onorato  
Office of the County Executive  
Courthouse  
436 Grant Street, Rm. 101  
Pittsburgh, PA 15219

Mr. Tom Balestrieri, President  
The Buncher Company  
Penn Liberty Plaza I  
1300 Penn Avenue, Ste. 300  
Pittsburgh, PA 15222-4211


Michael H. Wojick, County Solicitor  
Allegheny County Law Dept.  
Fort Pitt Commons  
445 Fort Pitt Blvd, Ste. 300  
Pittsburgh, PA 15219

Westmoreland County Board of  
Commissioners  
Main Office  
2 North Main Street, Ste. 101  
Greensburg, PA 15601

Mr. Chuck DiPietro, Transportation Dir.  
Southwestern Pennsylvania Commission  
425 Sixth Avenue, Ste. 2500  
Pittsburgh, PA 15219-1852

Larry J. Larese, Executive Dir.  
Westmoreland County IDC  
40 N PA Avenue, Fifth Floor, Ste 520  
Greensburg, PA 15601

Peter W. Denton, Esq.  
K&L Gates, LLP  
1601 K Street, NW  
Washington, DC 20006-1600

  
Richard R. Wilson, Esq.  
Attorney for Allegheny Valley  
Railroad Company

and to explain the decision made by Conrail to continue rail service to the Pittsburgh Produce Terminal in 1984 and thereafter.

Under NERSA, Conrail was required to file a Notice of Insufficient Revenues (“NIR”) for the segments of track to be abandoned under the expedited NERSA procedures. In 1983, I participated in the economic evaluation of several track segments serving the Pittsburgh Produce Terminal in the Strip District (Exhibit A). We referred to Conrail’s rail facilities in the Pittsburgh Strip District as the “Valley Industrial Track” or “Valley Industrial Cluster” which included both the rail line extending along Railroad Street from 29<sup>th</sup> Street to 16<sup>th</sup> Street on the north side of the Produce Terminal and the Smallman Street Track extending from 11<sup>th</sup> Street to 29<sup>th</sup> Street on the south side of the Produce Terminal located within the public right of way of Smallman Street (Exhibit A Pg.78<sup>1</sup>). At 29<sup>th</sup> Street the Smallman Street track crossed over the block between Smallman and Railroad Streets and connected to the rail line along Railroad Street. As indicated by the internal Conrail memoranda in Exhibit A, we considered traffic levels, freight revenues, property values, and rehabilitation costs for various track segments in order to assess abandonment options and to approach the City of Pittsburgh for track rehabilitation financing to preserve rail service to the Produce Terminal.

In October 1983, Conrail filed an NIR for its Smallman Street track in the Pittsburgh Strip District. Responding to concerns voiced by Strip District shippers and the Pittsburgh Urban Redevelopment Authority, Pittsburgh Mayor Richard S. Caliguiri wrote to Conrail CEO Stanley Crane on January 20, 1984 protesting Conrail’s plans to abandon the Smallman Street Track in the Strip District (Exhibit B). Mayor Caliguiri reminded Mr. Crane that in 1981 Conrail had required that the Urban Redevelopment Authority continue to use the Produce Terminal as a rail

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<sup>1</sup> I refer to the pagination noted at the top of each page of the Buncher Company exhibits.

served freight facility as a condition of URA's purchase of the Terminal (Exhibits B and C) from Conrail. Mayor Caliguiri emphasized that Conrail's abandonment of the Smallman Street track was inconsistent with the condition imposed by Conrail on the sale of the Produce Terminal to URA and that the City was prepared to litigate that issue if necessary to preclude Conrail's abandonment of rail service to the Produce Terminal.

On January 27, 1984, Mr. Crane directed me to prepare a reply to Mayor Caliguiri for his signature, clearing the letter with Conrail President Stuart M. Reed (Exhibit D). He also directed me to coordinate with Jim J. Kelly, a former aid to Mayor Caliguiri, who worked for Conrail to see if we could develop a plan to accommodate Mayor Caliguiri's concerns. However, on February 3, 1984, Attorney Mechem, filed Conrail's abandonment application for the Fort Wayne Connecting Track and the Valley Industrial Track from its connection with the Fort Wayne connecting track at 11<sup>th</sup> Street to 21<sup>st</sup> Street in AB167 (Sub No. 558N). In 1984, the only Valley Industrial Track connection to the lower deck of the Fort Wayne Bridge was the track in Smallman Street from 11<sup>th</sup> to 29<sup>th</sup> Street.

Four days later on February 7, 1984, Mr. Crane responded to Mayor Caliguiri with the letter I had prepared and assigned me to meet with the Mayor's staff the week of February 13, 1984 to discuss preservation of rail service to the Produce Terminal (Exhibit E). Mr. Crane also formally committed to delay filing Conrail's Strip District abandonment applications with the ICC until March 1, 1984. Conrail's February 3<sup>rd</sup> filing in AB167(Sub No. 558N) was therefore superseded by Mr. Crane's commitment to Mayor Caliguiri on February 7. We were not overly concerned about the February 3<sup>rd</sup> filing because under NERSA, it was still up to Conrail whether or not to exercise any abandonment authorization obtained from the ICC.

After twenty seven years, I do not recall all of the details of our negotiations with the City of Pittsburgh; but from my review of the three Conrail Smallman Street track abandonment files, I do remember that Conrail proposed several options to the City including reactivating the Valley Industrial Track on the north side of the Pittsburgh Produce Terminal. Given these service preservation options, the City agreed that the Smallman Street Track could be abandoned from 11<sup>th</sup> to 29<sup>th</sup> Street. These arrangements with the City of Pittsburgh are reflected in my May 14, 1984 memo to the Operating Committee regarding recommendations for the Smallman Street Track (Exhibit F). The track diagram attached to my memo depicts the various abandonment options under consideration by the Operating Committee at that time. In my memo, I noted that one of the alternatives under consideration was to reactivate the Valley Industrial Track on the north side of the Produce Terminal in order to serve the Produce Terminal. Accordingly, on May 23 and later on June 8, 1984 Conrail filed abandonment applications for the three segments of the Smallman Street Track from 11<sup>th</sup> to 29<sup>th</sup> Street in AB167 (Sub Nos. 571N, 572N and 641N) and retained its rail service rights to the north side of the Produce Terminal over that section of the Valley Industrial Track.

Thereafter, in September 1984, Attorney Mechem advised me that the ICC had approved Conrail's Smallman Street abandonments (Exhibit G) and on February 13, 1985 I made line embargo recommendations for the Smallman Street track segments to the Operating Committee. (Exhibit H) In July 1985, Mr. Betak notified Conrail staff that the Smallman Street track was cleared for dismantling. (Exhibit I) Thus, it is evident that Conrail and the City did not pursue alternatives 1 or 3 listed in my May 14, 1984 memo.

From 1984 to 1993, Conrail continued to offer rail service to Produce Terminal shippers via Conrail's Valley Industrial Track facilities on the north side of the Produce Terminal between

21<sup>st</sup> and 16<sup>th</sup> Street as indicated by the December 1993 Customer Service ZTS map (Exhibit J) and the 1986 Conrail Pittsburgh Division Maintenance Program and Track Chart for the Valley Industrial Track (Exhibit K) which depicts that track extending across and beyond 21<sup>st</sup> Street towards 16<sup>th</sup> Street .

## EXHIBITS

1. Exhibit A Proposed Line Abandonment Assessments
2. Exhibit B Letter from Mayor Caliguiri to Mr. Crane  
1-20-1984
3. Exhibit C 1981 Conrail deed to Pittsburgh URA for  
Produce Terminal Property
4. Exhibit D Mr. Crane's Memo to Mr. Gerhard Williams  
1-27-1984
5. Exhibit E Letter from Mr. Crane to Mayor Caliguiri  
2-7-1984
6. Exhibit F G.M. Williams Memo 5-14-1984  
Re: Smallman Street
7. Exhibit G Charles E. Mechem, Esq. Memo to G.M.  
Williams, Jr. 9-7-1984, 9-13-1984 – Re:  
ICC Abandonment Orders – Smallman  
Street Track
8. Exhibit H G.M. Williams Memo 2-13-1985  
Re: Line Embargo Recommendations-  
Smallman Street Track
9. Exhibit I J.F. Betak Memo 7-1-1985  
Re: Lines Cleared for Dismantling-  
Smallman Street Track
10. Exhibit J 1993 Conrail Customer Service ZTS Map
11. Exhibit K 1986 Conrail Pittsburgh Division  
Maintenance Program and Track Chart for  
the Valley Industrial Track.



RMD COMMENTS AND RECOMMENDATIONS -

PROPOSED LINE ABANDONMENTS

LINE DESCRIPTION:

STATE PA LINE NAME Smallman St.  
RDBR                      FROM MP 0.3 East of 14th St.  
TO MP 0.85 East of 24th St.

BACKGROUND:

Smallman St. Track, located in city streets in downtown Pittsburgh, generates contribution pre-rehabilitation but does not cover its long-term rehabilitation requirements.

In a previous Pittsburgh GBA presentation, we recommended:

- . completion of a detailed Engineering study to determine Conrail's long-term rehabilitation liability. (Previous rehabilitation estimate did not include any need to do any city street reconstruction work).
- . approaching Pittsburgh to seek rehabilitation financing.

Recommendation was based on argument that traffic, although somewhat unstable, was profitable, providing that Conrail had no major rehabilitation requirements. The major customer is the Produce Terminal located in a building which the City owns and recently reconstructed.

The Engineering study showed rehabilitation requirements to be \$305,000. City of Pittsburgh has recently been approached about purchasing the line (Conrail ownership of city street property is virtually nil) and funding any long-term rehabilitation. They are beginning to explore alternatives.

Economics (1981 traffic in 1982 000 dollars)

<u>Cars</u>	<u>Rev</u>	<u>Cont.</u>		<u>Ratio</u>		<u>Rehab</u>	
		<u>Pre</u>	<u>Post</u>	<u>Pre</u>	<u>Post</u>	<u>5-Yr.</u>	<u>Annual</u>
320	\$400	\$80	(\$9)	1.25	0.97	305	\$89

RECOMMENDATIONS:

File NIR. Work closely with Pittsburgh City on capital funding alternatives in conjunction with continued service. Bring line back to Operating Committee before filing abandonment, if necessary.

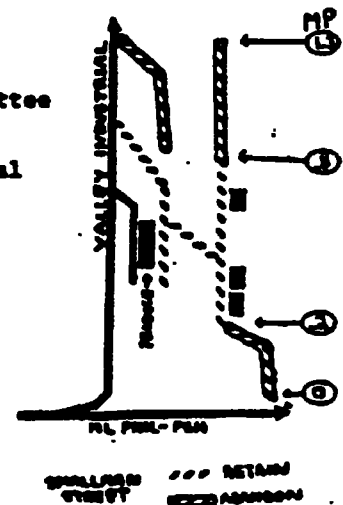
**VALLEY INDUSTRIAL CLUSTER****Smallman Street****Background**

The Smallman St. area, served off the Lower Valley at MP 0.8, includes the Pittsburgh Produce Terminal and a food warehouse.

Railbed is located in cobblestone city streets. Central Region estimates long-term railbed reconstruction at \$350,000, although five-year rehabilitation estimate is only \$33,000.

**Recommendations**

1. Pursue long-term rehabilitation funding from City of Pittsburgh for tracks serving major customers.
2. If negotiations are unsuccessful, bring line back to Operating Committee for final review.
3. Abandon three track segments in Smallman St. area which serve minimal traffic and should be abandoned.



Milepost	Miles	Cars	Rev	Contribution		Rev/Cost		Rehab	
				Pre	Post	Pre	Post	5-Yr	Ann
Retains: 0.2-0.8	.6	320	\$400	\$80	\$70	1.25	1.21	\$33	\$10
Abandons: 0.0-0.2	.2	2	2	(2)	(3)	.50	.39	3	1
0.8-1.3*	.5	16	12	(5)	(17)	.69	.41	42	12

\*Indicates route miles. Includes two separate pieces of track.

Source: Site-specific costing of 1981 traffic levels (or projections, where appropriate) in fourth quarter, 1982 dollars. Dollars are in thousands. Reference Appendix Pages 1-4.

L.C. 2296 REGION Central  
 BRANCH Smallman St. MILES .59  
 FROM Pittsburgh TO Pittsburgh  
 FROM M.P. 0.71 TO M.P. 1.30  
 VALUATION SECTION 7028 (21.3A)

MAP NO.	M.P.	TOTAL AREA	% FEE	FEE AREA
<u>1</u>	<u>.7 - 1.0</u>	<u>2.9</u>	<u>0</u>	<u>0</u>
<u>2</u>	<u>1.0 - 1.3</u>	<u>3.0</u>	<u>0</u>	<u>0</u>

TOTAL % FEE

0%

TOTAL AREA FEE

0

TOTAL % REVERSION

100%

TOTAL AREA REVERSION

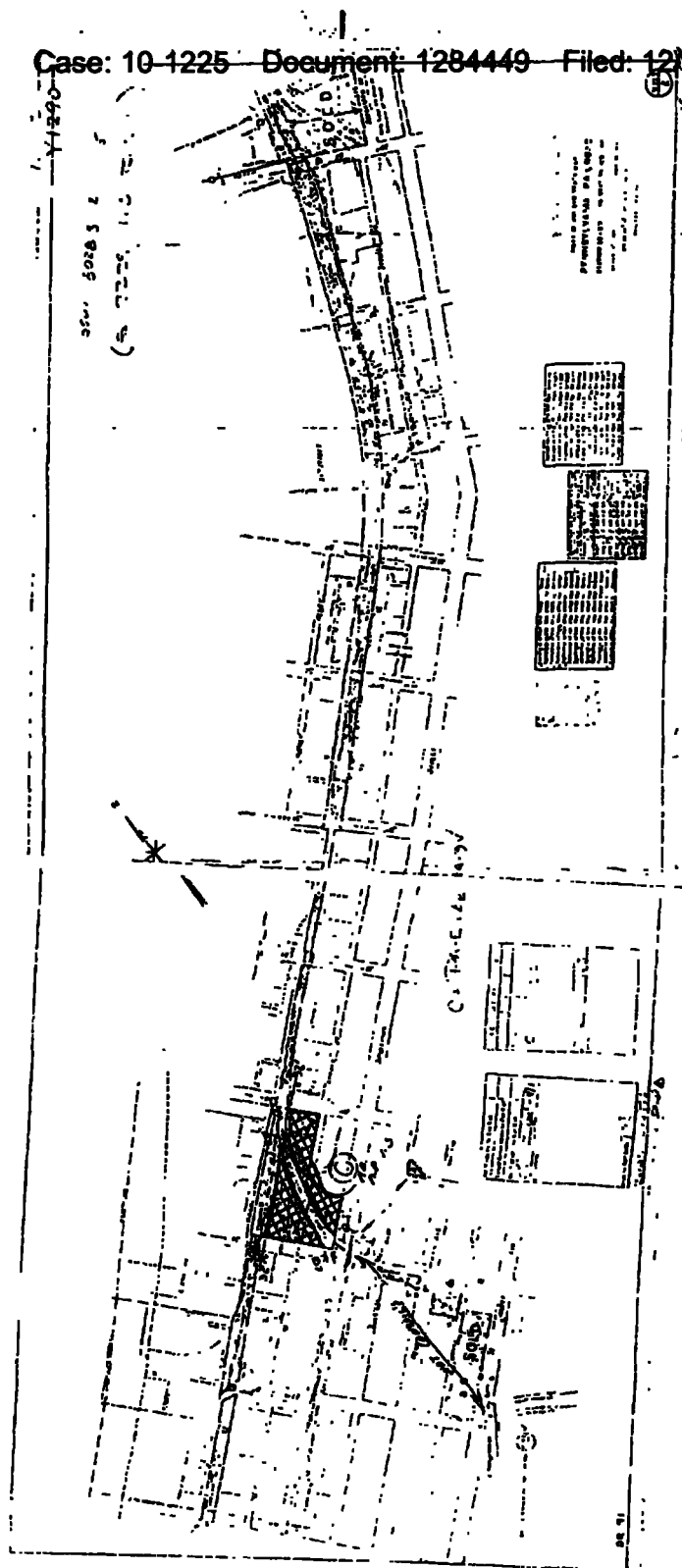
5.9

CWC  
 10-12-83

## WINDOW 11 APPRAISAL REPORTS

ST Line Name	Line Code	Milepost From	Milepost To	Reg	NIR Date	Sub No	Appr Recd	ROW	Area (acres) Parcels	Total	Appraised Value (\$) ROW	Parcels	Total	Name of Appraiser	Title % fee	Value to JWD
PA Smallman St.	2229	.71	1.3		10/3	571				.41			8,600	J.W. Latham		

The property from m.p. 0.71 to approximately m.p. 1.2 is in Smallman Street and has no real estate value. Acres and appraised value cover only property from m.p. 1.2 - 1.3.





Sub # 641

L.C. 20229REGION CentralBRANCH Smallman St.MILES .55

FROM \_\_\_\_\_

TO \_\_\_\_\_

FROM M.P. 0.3TO M.P. 0.85VALUATION SECTION 7028 (21.3PA)

MAP NO.

M.P.

TOTAL  
AREA%  
FEEFEE  
AREA10.3 - 0.8500

Parcels are Ordinance from the  
City of Pittsburgh

TOTAL % FEE

-0.2%  
100%

TOTAL AREA FEE

0

TOTAL % REVERSION

TOTAL AREA REVERSION

CWC  
2-6-14

Sub # 641

REGION Central  
 L.C. 2229 BRANCH Smallman St. MILES .55

FROM \_\_\_\_\_ TO \_\_\_\_\_  
 FROM M.P. 0.3 TO M.P. 0.85

VALUATION SECTION 7028 (21.3 Pa)

MAP NO.	M.P.	TOTAL AREA	% FEE	FEE AREA
1	0.3 - 0.85		0	0

Parcels are ordinances from the  
 City of Pittsburgh

TOTAL % FEE

-0.4

TOTAL AREA FEE

0

TOTAL % REVERSION

100%

TOTAL AREA REVERSION

AW  
 2-6-84



## WINDOW 11 APPRAISAL REPORTS

Sub No.	State	Line Name	Line Code	Milepost From To	NE Reg	Area (Acres)	Appraised Value (\$)	Name of Appraiser	% Fee Title
641	PA	Smallman Street	2229	0.3 0.85	RCH	.62	11,650	J. Latham	0

Note: Most of the Smallman St. Branch lies within the bed of Smallman St. When the track leaves Smallman St., it crosses private property by track easement (22nd St. - 23rd St.). The real estate value is for a triangular parcel at approximately m.p. 0.85, between 23rd and 24th Streets.



op-

*City of Pittsburgh*  
*Richard S. Caliguiri, Mayor*

January 20, 1984

Mr. L. Stanley Crane  
Chairman and Chief Executive Officer  
Consolidated Rail Corporation  
6 Penn Center Plaza  
Philadelphia, PA 19104

Dear Mr. Crane:

I am greatly distressed that your railroad has initiated the process of abandoning trackage along Smallman Street in the City of Pittsburgh.

As you know, Conrail recently sold the Urban Redevelopment Authority of Pittsburgh the Wholesale Produce Market for \$1.5 million. We are presently rehabilitating this structure at a cost of almost \$2 million with the proceeds of a grant from the Economic Development Administration of the U.S. Department of Commerce. In addition, the Urban Redevelopment Authority has had to undertake legal action to try to remove a non-rail using tenant granted an unusually favorable long-term lease by Conrail's Real Estate Department prior to the sale.

3/2/81  
L. Crane  
#6-5976

The railroad was aware that we had planned to use the building to help stabilize employment in the Strip District's wholesale produce industry and that part of the value inherent in the purchase price of the property was rail access. Conrail also required us to use its rail service in the following terms of the Agreement of Sale:

"that Purchaser acknowledges that the basic use of said building is as a rail freight facility served directly by rail lines of Conrail (as Grantor) and Purchaser (as Grantee) further acknowledges that its primary public purpose in acquiring said premises is to rehabilitate said building in order to provide continued rental space for the wholesale produce industry and agrees to use its best efforts to continue it as such or some other rail-oriented use."

L. Stanley Grane  
January 20, 1984  
Page 2

We always looked forward to working with Conrail in increasing employment and rail shipments when the facility's rehabilitation was completed. The Company's action to seek abandonment of service therefore is inexcusable and intolerable. We believe the City of Pittsburgh has been seriously misled by Conrail and I have instructed our Law Department to pursue our rights under local, state and federal law to the fullest extent in this and related matters.

As Chairman of the U.S. Conference of Mayors Transportation Policy Committee, I am aware of the issues involved in your actions to rationalize the physical plant of the railroad and have worked with other Northeastern mayors to prevent the dismemberment of Conrail. I am prepared to work with you and the shippers affected in developing solutions to the service and revenue problems the railroad may have. The City has received letters of profound concern from rail users along the Smallman Street spur and we cannot allow our new Wholesale Produce Market to lose common carrier rail service.

Your staff has indicated informally that they will extend the date of filing for abandonment until March. I formally request that your filing be so delayed and hope that we can use the additional time to favorably resolve this matter.

Sincerely,



RICHARD S. CANIGUIRI

/am:

9-D-200  
LOT 225  
BLOCK 6

9-D-200 } COMBINE  
9-D-225 } UNDER  
9-D-200

THISIndenture, made the 23<sup>rd</sup> day of February in the year  
of our Lord One Thousand Nine Hundred and Eighty-one (A.D. 1981)  
BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the  
Commonwealth of Pennsylvania, having an office at Six Penn Center  
Plaza, Philadelphia, Pennsylvania, 19104, hereinafter referred to  
as the Grantor, and URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH,  
a body corporate and politic organized and existing under the  
laws of the Commonwealth of Pennsylvania, whose mailing address  
is City-County Building, 414 Grant Street, Pittsburgh,  
Pennsylvania 15219 hereinafter referred to as the Grantee;

208  
WITNESSETH: That the said Grantor, for and in consideration  
of the sum of ONE MILLION ONE HUNDRED THOUSAND DOLLARS  
(\$1,100,000.00) lawful money of the United States of America,  
unto it well and truly paid by the said Grantee, at or before the  
sealing and delivery of these presents, the receipt whereof is  
hereby acknowledged, has remised, released and quitclaimed and by  
these presents does remise, release and quitclaim unto the said  
Grantee, the heirs or successors and assigns of the said Grantee,  
all right, title and interest of the said Grantor of, in and to

ALL THAT CERTAIN LOT OR PIECE OF GROUND situate in the 2nd  
Ward, City of Pittsburgh, County of Allegheny and Commonwealth of  
Pennsylvania, being more particularly bounded and described  
according to a plat of Survey prepared by Frank Louis Kline  
Registered Professional Engineer No. 18694-E dated January 1981  
as follows, to wit:

BEGINNING at the point of intersection of the Easterly line  
of 16th Street (60' wide) and the Northerly line of Smallman  
Street (60' wide); thence Northeasterly along the Northerly line  
of Smallman Street, North 52° 00' East, a distance of 804.06 feet  
to a point; thence continuing along the Northerly line of  
Smallman Street, North 49° 10' 45" East, a distance of 612.69  
feet to a point; thence continuing Northeasterly, North 40° 17'  
08" East, 129.36 feet to a point on the Westerly line of 21st  
Street (60' wide); thence Northwesterly along the Westerly line  
of 21st Street, North 41° 21' 39" West, a distance of 210.93 feet  
to a point; thence Southwesterly, South 49° 11' 00" West, a  
distance of 724.16 feet to a point, thence continuing  
Southwesterly, South 51° 56' 30" West, a distance of 818.71 feet  
to a point on the Easterly line of 16th Street; thence  
Southeasterly along the Easterly line of 16th Street, South 40°  
51' 45" East, a distance of 230.86 feet to the point of  
intersection of the Easterly line of 16th Street and the  
Northerly line of Smallman Street, the place of BEGINNING.

CONTAINING 3.156 acres.

Being a part of Block 7 and lot number 225-225  
HAVING ERECTED THEREON a one story brick warehouse building  
and an attached two story brick office building.

BEING a portion of the premises which the Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-193, dated March 30, 1976 and recorded in Allegheny County, Pennsylvania, in Deed Book 6001, at Pge 591, granted and conveyed unto Consolidated Rail Corporation.

TOGETHER with 6000 lineal feet of railroad track and appurtenances thereto located on the above described premises.

RESERVING, however, unto the said Grantor, its successors and assigns, the existing railroad track and appurtenant devices and facilities in connection with the same located on the extreme southeasterly 15 feet of the parcel of land hereinbefore described together with the permanent right, liberty and privilege of maintaining, repairing, renewing, operating and using the same and with the free and uninterrupted right, liberty, and privilege of passing at all times hereafter over and upon the same with or without locomotives, freight or other cars.

208  
SUBJECT, however, to any easements or agreements of record or otherwise affecting the land hereby conveyed, to the state of facts disclosed in a survey by Francis Louis Kline, Registered Professional Engineer, dated January 1981, and to any other pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the herein conveyed premises, together with the right to maintain, repair, renew, replace, use and remove same.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances therunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof, SUBJECT and RESERVING as aforesaid.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the said Grantee forever, SUBJECT and RESERVING as aforesaid.

THIS INSTRUMENT is executed, delivered and accepted upon the understanding and agreement:

(a) that Grantee acknowledges that the basic use of the building located on the land hereby conveyed is as a rail freight facility served directly by rail lines of Grantor and Grantee further acknowledges that its primary public purpose in acquiring said premises is to rehabilitate said building in order to provide continued rental space for the wholesale produce industry and agrees to use its best efforts to continue it as such or some other rail-oriented use;

(b) that Grantor shall not be liable or obligated to construct or maintain any fence between the land hereinbefore described and land of Grantor adjoining the same; or be liable or obligated to pay for any part of the cost or expense of constructing or maintaining such a fence or any part thereof; or be liable for any compensation for any damage that may result by reason of the non-existence of such a fence;

(c) that the said Grantee shall not have or assert to have any claim or demand whatsoever for compensation for damages, whether said damages be direct or consequential, to the land hereinbefore described or to any buildings or improvements now or hereafter erected thereon, or to the contents thereof, which may be caused by the operation, maintenance, repair or renewal of

Grantor's railroad or which may be caused by vibration resulting from the operation, maintenance, repair or renewal thereof; and the said Grantee hereby expressly releases the said Grantor from liability for any such damages;

(d) that in the event the tracks of the railroad of Grantor are elevated or depressed, or the grades of any streets, avenues, roads, lanes, highways or alleys over said railroad in the vicinity of the land hereinbefore described are changed so that they shall pass overhead or underneath the said tracks and railroad, or in the event any grade crossing is vacated and closed, the said Grantee, as owner of the land hereinbefore described, shall not ask, demand, recover or receive any compensation whatsoever for any damage of whatsoever nature caused by or in any manner growing out of the separation or change of grades of said railroad and/or said streets, avenues, roads, lanes, highways or alleys or out of the vacation and closing of any grade crossing;

(e) that should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

206  
"NOTICE - THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. THIS NOTICE is set forth in the manner provided in Section 1 of the Act of September 10, 1965, P.L. 505, No. 335 (52 P.S. 1531)."

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include in all cases the heirs or successors and assigns of the respective parties.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
FEE  
PAID BY  
DATE  
17X  
930.00  
PB. 371

00006  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
FEE  
PAID BY  
DATE  
17X  
930.00  
PB. 371

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
FEE  
PAID BY  
DATE  
17X  
930.00  
PB. 371

00006  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
FEE  
PAID BY  
DATE  
17X  
930.00  
PB. 371

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
FEE  
PAID BY  
DATE  
17X  
930.00  
PB. 371

00006  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
FEE  
PAID BY  
DATE  
17X  
930.00  
PB. 371

IN WITNESS WHEREOF, the said Grantor has caused this Inden-

L. Stanley Crane  
FROM: Room 1838 - 6 PC

JFF  
cc: E. F. Williams (M. W.)  
J. E. Sanderfer (M. W.)  
F.Y.D.  
4/3/84 J. J. J.

DATE: January 27, 1984

TO	FOR
S. M. Reed	As information
R. W. Garbett	Handling
W. B. Newman, Jr.	Handling, sending me copy of reply
R. H. Platt	See me
E. W. Rowe	Comment
A. Schummel	Recommendation
X G. M. Williams, Jr.	To note and return
	X Prepare a reply for my signature
	Clearing with Mr. Reed
	X Note: suggest you call with M. E. Kelly
	who had conversation with
	Myke Callahan re this project.

cc: E. E. Reed      G. E. Kelly  
R. W. Garbett      E. E. Wilson  
J. E. Sanderfer  
W. B. Newman

John J. J.

13



**CONRAIL**

L. STANLEY CRANE  
CHAIRMAN AND  
CHIEF EXECUTIVE  
OFFICER

*Sub 641*  
*8F9*  
*2/10*  
*have a good trip.*

February 7, 1984

Honorable Mayor Richard S. Caliguiri  
City of Pittsburgh  
513 City County Building  
Pittsburgh, PA 15219

Dear Mayor Caliguiri:

I appreciate your concern relating to Conrail's potential abandonment of our Smallman Street track serving the Wholesale Produce Market in Pittsburgh's Strip District.

*Ad*  
*Please file with you abandonment*  
*file. Recd*

I also know that you appreciate Conrail's need to ensure our continued profitability by focusing our scarce capital resources on Conrail lines that make a positive financial contribution and by divesting ourselves of those that don't. It is this need that motivated our filing of a Notice of Insufficient Revenue for the Smallman Street track.

It is clear that the Smallman Street track and the Produce Market have a long and complex history. Conrail is eager to work with you to clarify any outstanding issues regarding the City's purchase of the Produce Market and to pursue alternatives for continued rail service.

As you know, our Regional Market Development staff has met with your people several times to identify alternatives for preservation of rail service to the Produce Market. We understand that your staff will meet with the Produce Market shippers on February 8 to identify their long-term rail needs and to develop options to meet those needs. We look forward to working with you subsequent to that session to address and respond to the shippers' recommendations for continued rail service.

Mayor Richard S. Caliguiri  
February 7, 1984  
Page 2

I have asked Gery Williams, Assistant Vice President, Regional Market Development, and John Jaeger, Director, Real Estate, to come out to Pittsburgh during the week of February 13 to represent Conrail in furtherance of these discussions.

By this letter, I am formally committing to delaying the filing of our abandonment application with the Interstate Commerce Commission until March 1, as you requested. I am optimistic that Conrail can work with you to identify a solution to meet the transportation needs of your shippers consistent with Conrail's profitability requirements.

Very truly yours,

signed/L. Stanley Crane

cc:

S. M. Reed	-	1838 Six Penn Center
J. A. Hagen	-	1808 Six Penn Center
W. B. Newman, Jr.	-	955 L'Enfant
R. W. Garbett	-	1040 Six Penn Center
L. A. Huff	-	901-1528 Walnut Street
B. B. Wilson	-	1838 Six Penn Center
J. J. Kelly	-	1040 Six Penn Center

**CONRAIL**

**MEMORANDUM**

G-4C Nov 12-82

**DATE:** May 14, 1984

**TO:** OPERATING COMMITTEE

**FROM:** G. M. Williams, Jr. *M* Rm. 1601, 1528 Walnut St.

**SUBJECT:** Smallman Street

---

**RECOMMENDATION:**

File an abandonment application on the Smallman Street track in downtown Pittsburgh as a follow-up to the NIR. Contribution from the Produce Terminal traffic does not cover rehabilitation expense. Conrail has proposed several options for continued service to the Produce Terminal, none of which is precluded by the abandonment filing.

**BACKGROUND:**

In October, 1983, Conrail filed a Notice of Insufficient Revenue on the Smallman Street track in downtown Pittsburgh (MP 0.2-0.8) reflecting non-contributory economics post-rehabilitation. The Operating Committee requested that they review the status of corrective action negotiations before approving the abandonment filing.

Segment represents 0.6 miles of track embeded in cobblestone streets of downtown Pittsburgh.

Updated decision data on the Produce Terminal (12-month period ending September 30, 1983) shows the following:

Carloads:	163
Revenue:	\$175,000
Costs:	
On Branch	\$33,000
Off Branch	\$139,000
	<u>\$172,000</u>

Contribution		
Pre-rehab.	\$3,000	1.02

Five-year rehabilitation estimates for the city street track range from \$100,000 to \$300,000.

Primary traffic is inbound produce moving to the Pittsburgh Produce Terminal via a track on the south side of the terminal. Produce traffic has been declining steadily with erosion to trailvan and truck. Recent negotiations with Pacific Fruit Growers Express may return an additional 70 carloads to the railroad. However, even at 233 carloads the contribution from the produce traffic would be \$4,000, an amount insufficient to cover the rehabilitation of the street railway.

Conrail has met several times with the City of Pittsburgh, who owns the Produce Terminal, to explore alternatives for continued service. Currently, we have proposed three alternatives to the City:

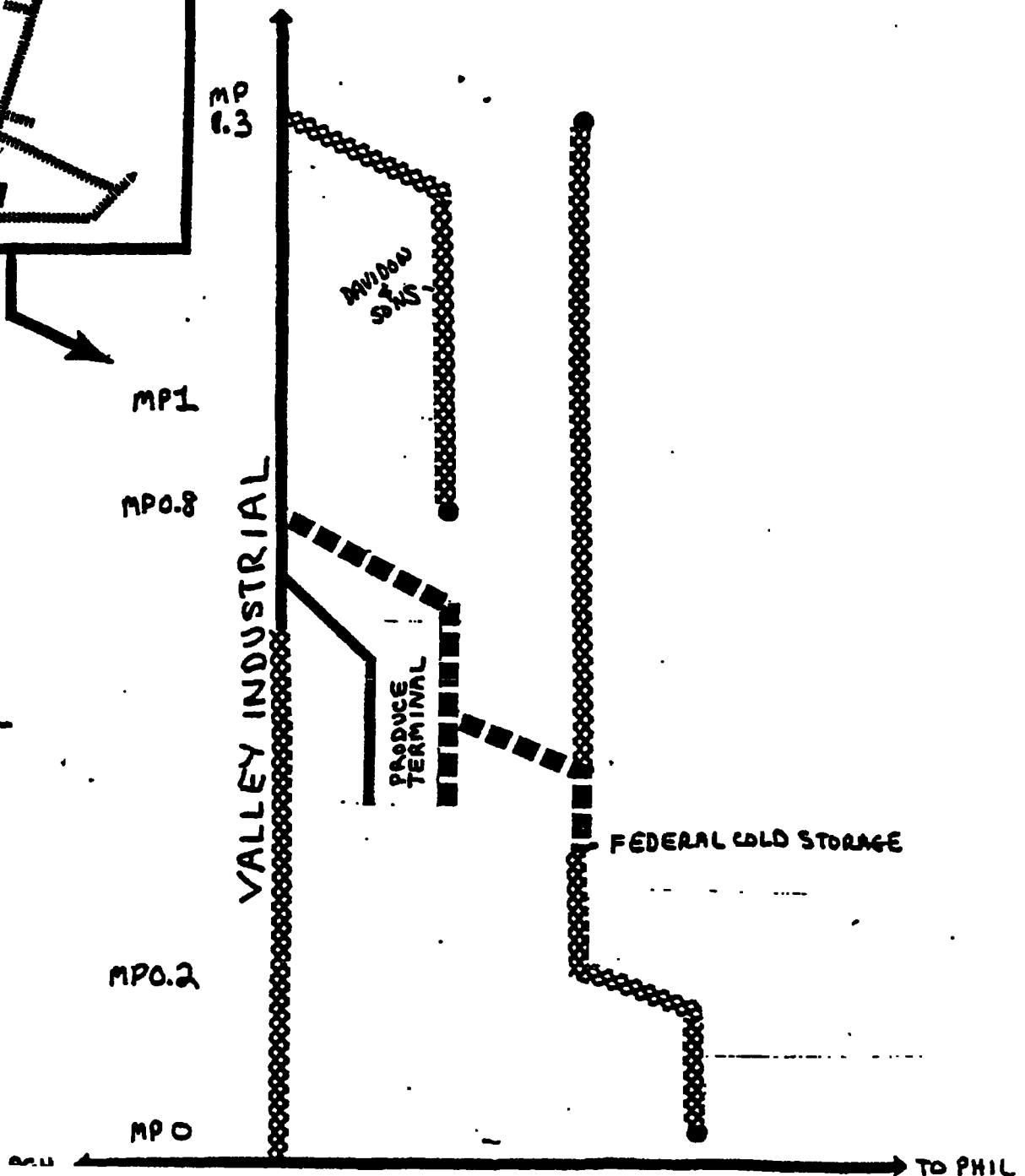
1. Conrail would provide contract carrier service over the abandoned line subsequent to its purchase post-abandonment. New owner would be responsible for rehabilitation and track policing to relieve current street congestion.
2. City would reactivate track on the north side of the terminal where trucks now access the terminal. City owns property and would be responsible for rehabilitation.
3. If the Chessie is interested in purchasing the Smallman Street track, which we doubt Conrail would permit them to have overhead access to reach this track.

None of these alternatives is precluded by abandonment. The City is now evaluating their options and working with Conrail to bring the matter to successful conclusion.

## SMALLMAN STREET AREA

KEY:

- RETAIN
- FILE ABANDON.
- SUB 641  
PRODUCE AREA  
ABANDONMENT



CONRAIL



MEMORANDUM

G-4C Nov 12-82

DATE: September 7, 1984

TO: G. M. Williams, Jr.  
Room 1601  
1528 Walnut Street

FROM: Charles E. Mechem  
Room 1138  
Six Penn Center

SUBJECT: ICC Abandonment Orders

*CSM*

By orders served August 31 and September 5, copies of which are attached, the Commission has approved the following Window II abandonments:

<u>Line</u>	<u>Sub No.</u>
Smallman Street Track	571 PqL
Smallman Street Track	572 "
Logansport Secondary Track	618 Chi
South Bend Secondary Track	672 "
Goshen Industrial Track	682 "
Niles Industrial Track	689 PqL
Oxford Road Branch Cluster	699 KOP
Pittsburgh/Columbus Panhandle	713 PqL
Olney Running Track	719 KOP
7X Track	728 Cin
Westmoreland Street Branch	736 KOP
Raritan North Shore Branch	755 NWK
Logansport Secondary Track	760 Chi
Racine Avenue Line	772 "
Shamokin Secondary Track	779 KOP
Pittsburgh/Chicago Main Line	789 Chi
Terre Haute-Lenox Main Line	800 "
Hulman Lead Track	830 Cin
Indian Creek Secondary Track	843 Cin
South Chicago and Southern Track	844 Chi

I will appreciate your letting me know when Conrail implements these orders by (1) embargoing the lines and (2) cancellation of relevant tariffs.

CEM/km

Enclosures

*WVE*

D2

INTERSTATE COMMERCE COMMISSION  
CERTIFICATE AND DECISION

SERVICE DATE  
AUG 31 1984

Docket No. AB-167 (Sub-No. 572N)

CONRAIL ABANDONMENT IN ALLEGHENY COUNTY, PA

Decided: August 28, 1984

On May 24, 1984, Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973<sup>1/</sup> to abandon a total of 0.3 miles of track known as the Smallman Street Track, which extends from a point near milepost 0.0 east of 11th Street to a point near milepost 0.3 east of 14th Street in the City of Pittsburgh, in Allegheny County, PA.

Under section 308(c) the Commission must grant any application for abandonment filed by Conrail within 90 days after the date such application is filed unless an offer of financial assistance is made pursuant to section 308(d) during that 90-day period.

The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

It is certified: Conrail is authorized to abandon the line described above.

It is ordered:

This certificate and decision is effective upon service.

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

(SEAL)

James H. Bayne  
Secretary

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<sup>1/</sup> This section was added by the Northeast Rail Service Act of 1981. Pub. L. 97-35.

ONRAIL

*file*  
MEMORANDUM

6-4C Nov 12-82

DATE: September 13, 1984

TO: G. M. Williams, Jr. FROM: Charles E. Mechem  
Room 1601 Room 1138  
1528 Walnut Street Six Penn Center

SUBJECT: ICC Abandonment Orders

*BSM*

By orders served September 7 and 10, copies of which are attached, the Commission has approved the following Window II abandonments:

<u>Line</u>	<u>Sub No.</u>
Blockhouse Run Track	561 <i>RGL</i>
Smallman Street Branch	641 "

I will appreciate your letting me know when Conrail implements these orders by (1) embargoing the lines and (2) cancellation of relevant tariffs.

CEM/km

Enclosures

cc: R. B. Hasselman  
C. W. Owens  
D. W. Mattson  
J. E. Musslewhite  
C. E. Wogan  
W. H. Sheppard  
B. L. Frye  
B. J. Gordon  
K. L. MacKavanagh  
J. A. Sees  
J. E. Sandefur  
J. W. Dietz  
J. T. Sullivan  
E. H. Follweiler  
W. B. Newman, Jr.  
J. H. Beer  
R. E. Gratz



SERVICE DATE

SEP 10 1984

D1

INTERSTATE COMMERCE COMMISSION

CERTIFICATE AND DECISION

Docket No. AB-167 (Sub-No. 641N)

CONRAIL ABANDONMENT IN ALLEGHENY COUNTY, PA

Decided: September 7, 1984

On June 11, 1984, Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973<sup>1/</sup> to abandon a total of 0.55 miles of track described as the Smallman Street Branch in Pittsburgh from a point east of 14th Street (approximately Milepost 0.3) to a point east of 24th Street (approximately Milepost 0.85), in Allegheny County, PA.

Under section 308(c) the Commission must grant any application for abandonment filed by Conrail within 90 days after the date such application is filed unless an offer of financial assistance is made pursuant to section 308(d) during that 90-day period.

The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

It is certified: Conrail is authorized to abandon the line described above.

It is ordered:

This certificate and decision is effective upon service.

By the Commission, Division 1, Commissioners Sterrett, Taylor, and Andre. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

James H. Bayne  
Secretary

(SEAL)

---

<sup>1/</sup> This section was added by the Northeast Rail Service Act of 1981. Pub. L. 97-35.

CONRAIL

MEMORANDUM

DATE: February 13, 1985

TO: Operating Committee

FROM: G. M. Williams, Jr. Location: 1601-1528 Walnut St.

SUBJECT: Line Embargo Recommendation

LINE NAME: Smallman Street Track SUB NO. 572N  
LOCATION: Pittsburgh, PA RDBR NO. 22-2229  
FROM MP/TERMINAL: 0.00 ; East of 11th Street  
TO MP/TERMINAL: 0.30 ; East of 14th Street  
DATE FILED: 5/24/84 ; ICC SERVICE DATE: 8/31/84

CUSTOMERS ON LINE:

CARLOADS\*

		<u>83</u>	<u>6 MO. 84</u>
<u>Adelman Lumber</u>	<u>M.P. 0.2</u>	<u>1</u>	<u>0</u>
<u>Byrnes and Keefer</u>	<u>M.P. 0.0</u>	<u>0</u>	<u>0</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>

\* Abandonment decision based on 2 carloads in 1981.

STATION NO.

STATION NAME

<u>4727</u>	<u>Pittsburgh 11th Street</u>
<u>4733</u>	<u>Pittsburgh, PA Produce Terminal</u>
<u>4751</u>	<u>Pittsburgh 29th Street</u>
<u>4752</u>	<u>Pittsburgh 34th Street</u>
<u>4753</u>	<u>Pittsburgh 43rd Street</u>

EMBARGO APPROVED: \_\_\_\_\_ DISAPPROVED (REASON) \_\_\_\_\_

Operating Committee Meeting Date: \_\_\_\_\_

Exhibit H

dated Rail Corporation  
ation for Abandonment

Docket AB-167  
Sub No. 572 N

**EXHIBIT B**  
**LOCATION AND MAP**

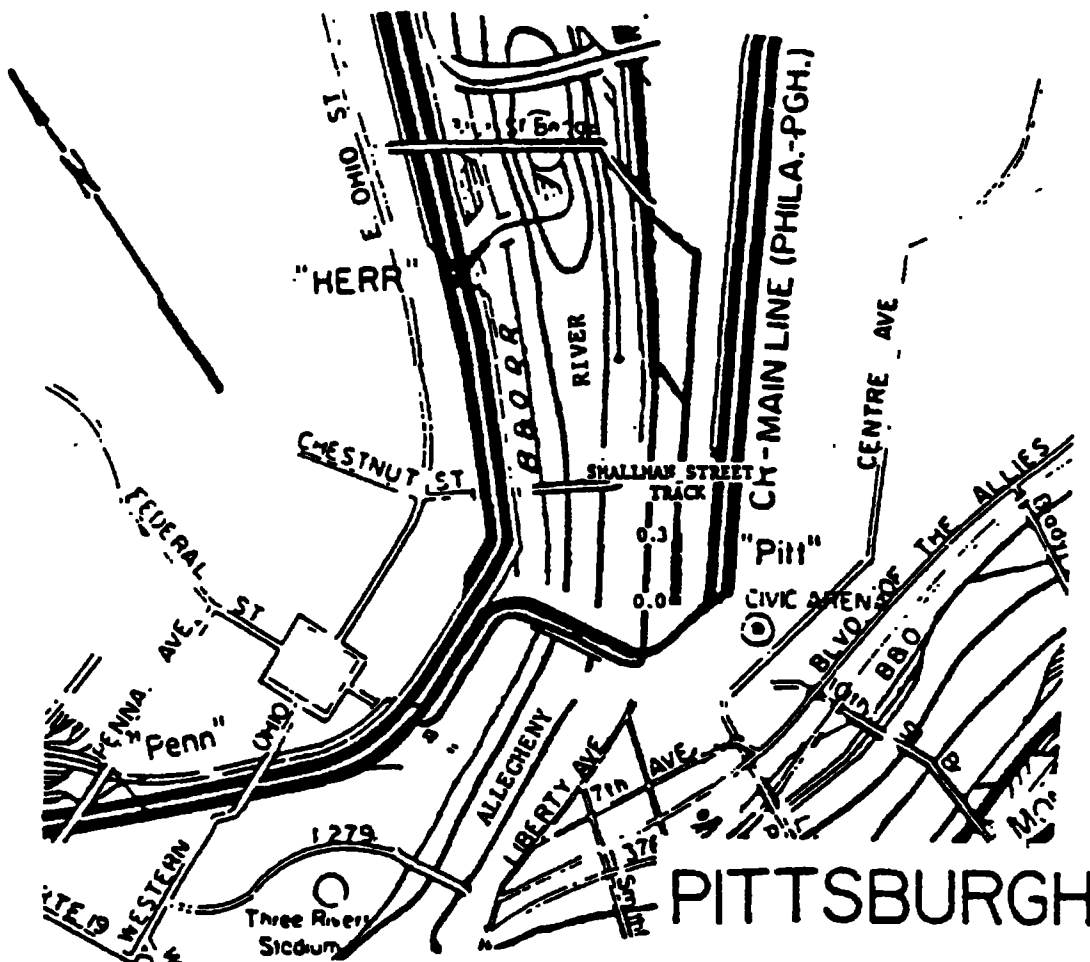
**SHALLMAN STREET TRACK**

At Pittsburgh

East Side of 11th Street (Approx. M.P. 0.0) to  
East of 14th Street (Approx. M.P. 0.3)

State(s): PA

Counties: Allegheny



PROPOSED ABANDONMENT

CONRAIL

MEMORANDUM

DATE: February 13, 1985

TO: Operating Committee

FROM: G. M. Williams, Jr. Location: 1601-1528 Walnut St.

SUBJECT: Line Embargo Recommendation

LINE NAME: Smallman Street Branch SUB NO. 641N  
LOCATION: Pittsburgh, PA. RDBR NO. 22-2229  
FROM MP/TERMINAL: 0.30 ; Point East of 14th Street  
TO MP/TERMINAL: 0.85 ; Point East of 24th Street  
DATE FILED: 6/11/84 ; ICC SERVICE DATE: 9/10/84

CUSTOMERS ON LINE:

CARLOADS\*

		<u>83</u>	<u>6 MO. 84</u>
<u>Produce Terminal</u>	<u>M.P. 0.7</u>	<u>181</u>	<u>55</u>
<u>New Federal Cold Storage</u>	<u>M.P. 0.6</u>	<u>6</u>	<u>20</u>

\* Abandonment decision based on 320 carloads in 1981.

STATION NO.

STATION NAME

4727	Pittsburgh 11th Street
4733	Pittsburgh, PA Produce Terminal
4751	Pittsburgh 29th Street
4752	Pittsburgh 34th Street
4753	Pittsburgh 43rd Street

EMBARGO APPROVED: \_\_\_\_\_ DISAPPROVED (REASON) \_\_\_\_\_

Operating Committee Meeting Date: \_\_\_\_\_

for Abandonment:

Sub No. 641N

EXHIBIT B  
LOCATION AND MAP

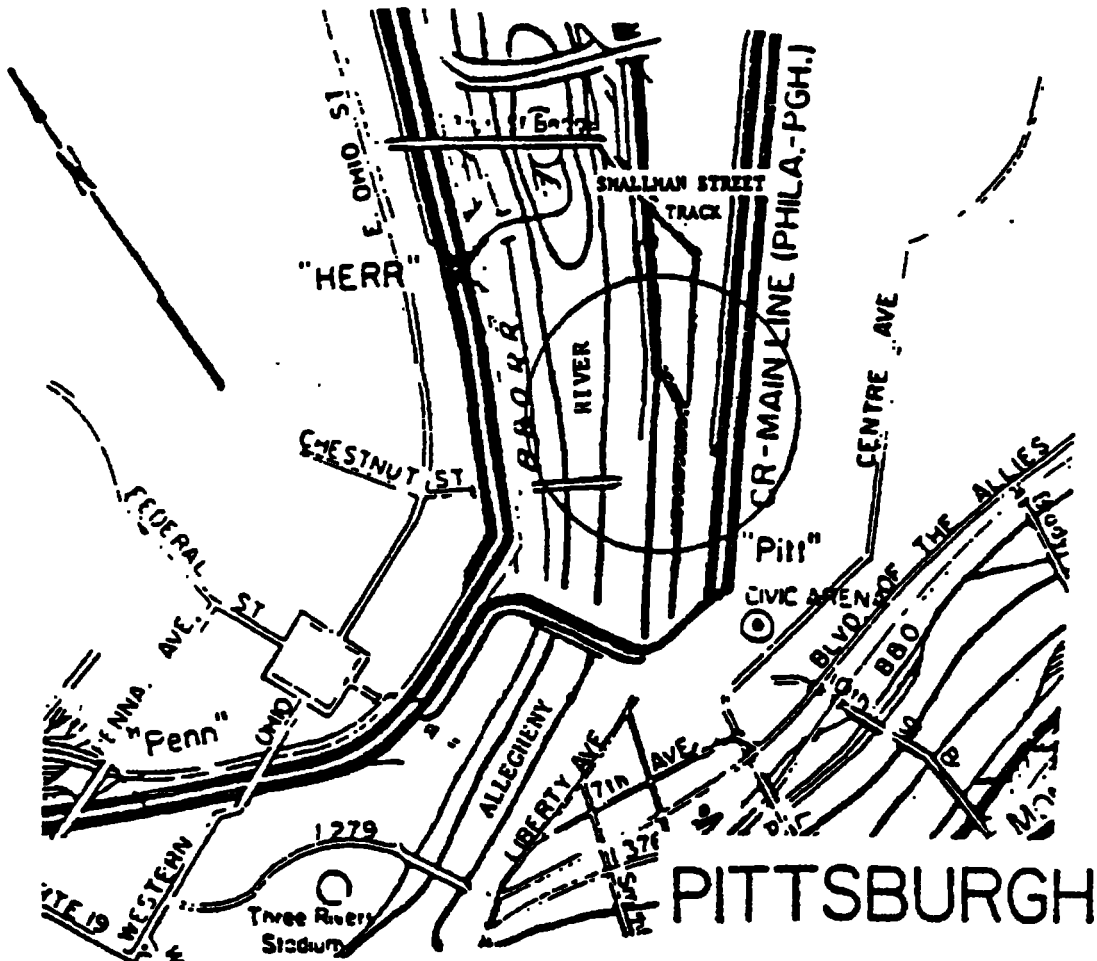
SMALLMAN STREET TRACK

In Pittsburgh

E. of 14th Street (Approx. M.P. 0.3) to  
East of 24th Street (Approx. M.P. 0.85)

State(s): PA

Counties: Allegheny



PROPOSED ABANDONMENT ~~CONVEYANCE~~

ONRAIL

MEMORANDUM

*file*  
*Op. Comm.*  
*3/4*

DATE: February 13, 1985

TO: Operating Committee

FROM: G. M. Williams, Jr. Location: 1601-1528 Walnut St.

SUBJECT: Line Embargo Recommendation

OPERATING COMMITTEE APPROVAL

LINE NAME: Smallman Street Track ~~for abandonment~~ 9-26-83 & 5-14-84 SUB NO. 5714

LOCATION: Pittsburgh, PA RDBR NO. 22-2229

FROM MP/TERMINAL: 0.71 ; South of 22nd Street

TO MP/TERMINAL: 1.3 ; South of 29th Street

DATE FILED: 5/24/84 ; ICC SERVICE DATE: 8/31/84

CUSTOMERS ON LINE:

CARLOADS\*

		83	6 MO. 84
Davidow and Sons, Inc.	M.P. 1.0	2	1

\* Abandonment decision based on 67 carloads in 1981.

STATION NO.

STATION NAME

4727	Pittsburgh 11th Street
4733	Pittsburgh, PA Produce Terminal
4751	Pittsburgh 29th Street
4752	Pittsburgh 34th Street
4753	Pittsburgh 43rd Street

EMBARGO APPROVED: \_\_\_\_\_ DISAPPROVED (REASON) \_\_\_\_\_

Operating Committee Meeting Date: \_\_\_\_\_

Application for Abandonment

Docket AB-167  
Sub No. 571 N

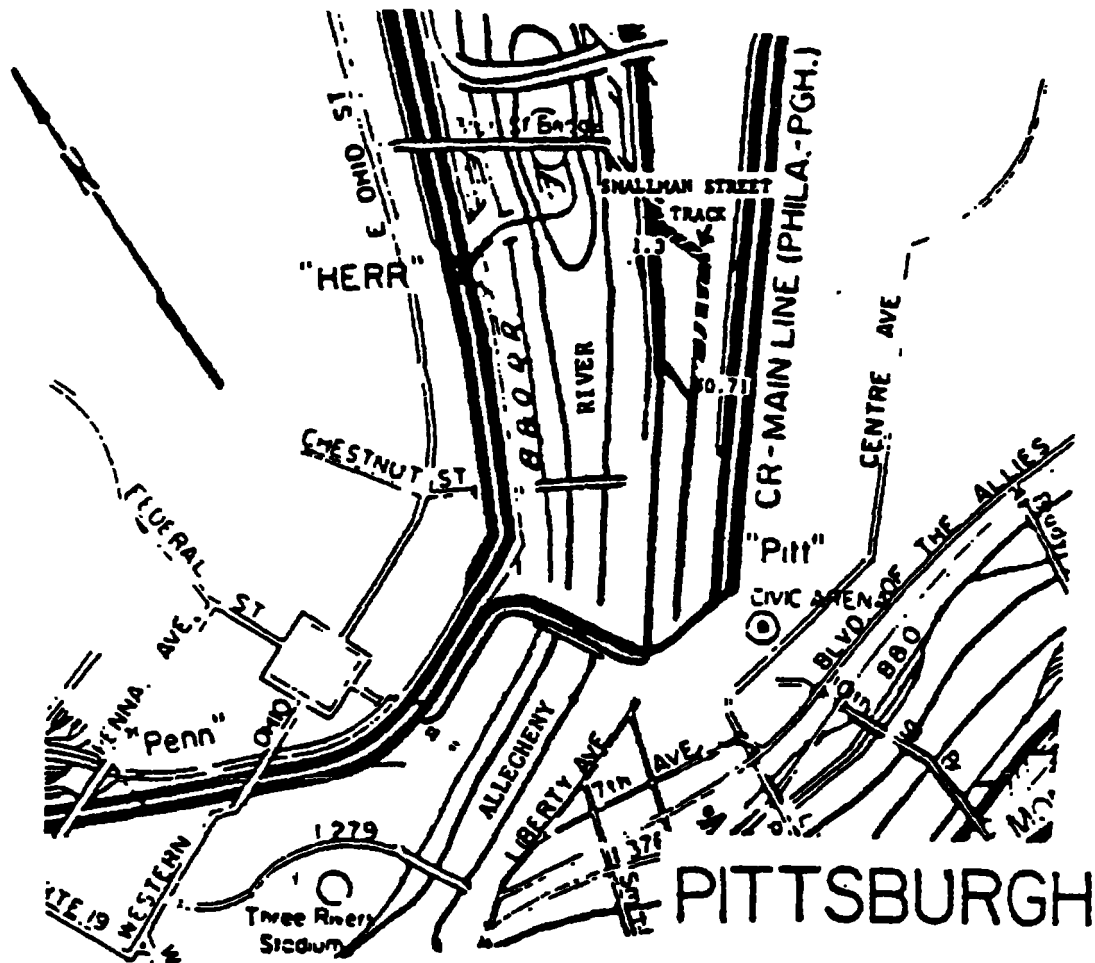
**EXHIBIT B**  
**LOCATION AND MAP**

**SMALLMAN STREET TRACK**

At Pittsburgh

South of 22nd Street (Approx. M.P. 0.71) to  
South of 29th Street (Approx. M.P. 1.3)

State(s): PA Counties: Allegheny



PROPOSED ABANDONMENT

ONRAIL

MEMORANDUM

G-4C New 12-82

DATE: July 1, 1985

TO: DISTRIBUTION

FROM: J. F. Betak

LOCATION: Rm. 1601 - 1528 Walnut St.

SUBJECT: Lines Cleared for Dismantling

---

The Smallman Street Track (Sub No. 571N) at Pittsburgh, PA from MP 0.71 to MP 1.3 is cleared for dismantling. This line was filed for abandonment on May 24, 1984 and approved by the ICC on August 31, 1984. The line was embargoed on March 5, 1985 and the 120-day date was December 29, 1984.

Please note that an approved AFE is required prior to physically dismantling the subject lines.

Before dismantling track or disposing of real estate, Messr. Gordon and Huff should comply with applicable state requirements regarding crossings and bridges as well as state requirements regarding the disposition of abandoned right-of-way.



- 2 -

DISTRIBUTION:

L. Stanley Crane	-	1838 Six Penn Center
S. M. Reed	-	1846 Six Penn Center
C. N. Marshall	-	1810 Six Penn Center
R. B. Hasselman	-	1740 Six Penn Center
G. C. Woodward	-	1534 Six Penn Center
B. B. Wilson	-	1842 Six Penn Center
W. B. Newman, Jr.	-	955 L'Enfant Plaza
S. Resnick	-	1040 Six Penn Center
C. W. Owens	-	1744 Six Penn Center
J. T. Whatmough	-	401-1528 Walnut Street
J. F. Folk	-	950 Six Penn Center
B. J. Gordon	-	1640 Six Penn Center
L. A. Huff	-	901-1528 Walnut Street
G. M. Williams, Jr.	-	1238 Six Penn Center
J. T. Sullivan	-	1200-15 N. 32nd Street
C. E. Wogan	-	801-1528 Walnut Street
D. W. Mattson	-	806 Six Penn Center
T. H. Ramsey	-	1601-1528 Walnut Street
C. E. Mechem	-	1138 Six Penn Center
J. E. Sandefur	-	901-1528 Walnut Street
J. F. Jaeger	-	901-1528 Walnut Street
J. J. Baffa	-	1640 Six Penn Center
D. F. Donovan	-	1138 Six Penn Center
W. G. Kemmerer	-	1634 Six Penn Center
J. T. Orsborn	-	1601-1528 Walnut Street
R. L. Teeter	-	1640 Six Penn Center
W. G. Jones	-	1101-15 North 32nd Street
L. E. Williams	-	601-Six Penn Center
T. J. O'Brien	-	1338-Six Penn Center
W. R. Oates	-	1601-1528 Walnut Street

cc: R. E. Gratz  
C. A. Bassani  
D. E. Yerks

ONRAIL

MEMORANDUM

G-4C New 12-82

DATE: July 1, 1985

TO: DISTRIBUTION

FROM: J. F. Betak  LOCATION: Rm. 1601 - 1528 Walnut St.

SUBJECT: Lines Cleared for Dismantling

---

The Smallman Street Track (Sub No. 572N) at Pittsburgh, PA from MP 0.00 to MP 0.30 is cleared for dismantling. This line was filed for abandonment on May 24, 1984 and approved by the ICC on August 31, 1984. The line was embargoed on March 5, 1985 and the 120-day date was December 29, 1984.

Please note that an approved AFE is required prior to physically dismantling the subject lines.

Before dismantling track or disposing of real estate, Messrs. Gordon and Huff should comply with applicable state requirements regarding crossings and bridges as well as state requirements regarding the disposition of abandoned right-of-way.

East  
7/18

AMM

- 2 -

DISTRIBUTION:

L. Stanley Crane	-	1838 Six Penn Center
S. M. Reed	-	1846 Six Penn Center
C. N. Marshall	-	1810 Six Penn Center
R. B. Hasselman	-	1740 Six Penn Center
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C. E. Mechem	-	1138 Six Penn Center
J. E. Sandefur	-	901-1528 Walnut Street
J. F. Jaeger	-	901-1528 Walnut Street
J. J. Baffa	-	1640 Six Penn Center
D. F. Donovan	-	1138 Six Penn Center
W. G. Kemmerer	-	1634 Six Penn Center
J. T. Orsborn	-	1601-1528 Walnut Street
R. L. Teeter	-	1640 Six Penn Center
W. G. Jones	-	1101-15 North 32nd Street
L. E. Williams	-	601-Six Penn Center
T. J. O'Brien	-	1338-Six Penn Center
W. R. Oates	-	1601-1528 Walnut Street

cc: R. E. Gratz  
C. A. Bassani  
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**PAGE 1**

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03 217 00 00 Smallman St. Lead Tk.  
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03 703 99 99 House - Tk.#3 - (Fruit Auction)  
03 731 01 01 J.S. McCormick (Leased 50') Tk.  
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